Supreme Court, U. S.
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APPENDIX (Volume II)

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-44

ROBERT BURRELL, *Petitioner,*
v.
MILTON McCRAY, *Respondent.*

SERGEANT V. D. SMITH, ETC., *Petitioner,*
v.
MILTON McCRAY, *Respondent.*

GERALD McCLELLAN, ET AL., *Petitioners,*
v.
JAMES E. X. STOKES, *Respondent.*

DR. HAROLD M. BOSLOW AND
DR. DOMINGO C. SORONGON, *Petitioners,*
v.
JOHN WASHINGTON, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 9, 1975
CERTIORARI GRANTED NOVEMBER 3, 1975

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MRS. CHRISTINE B. WEBER,

was called as a witness for and on behalf of the Defendant, and, having been first duly sworn, testified as follows:

(The Clerk) Give your name for the record.

(The Witness) Mrs. Christine B. Weber, W-e-b-e-r.

(The Clerk) Thank you.

DIRECT EXAMINATION

By Mr. Rosenthal:

Q. Mrs. Weber, what is your present occupation? A. I'm Assistant Supervisor.

Q. Where? A. At the Maryland Penitentiary.

Q. And how long have you been so employed? A. 15 years.

Q. And you are a registered nurse? (497) A. Yes, sir.

Q. And you received your training where? A. At the University of Maryland Hospital.

Q. All right.

Now, you're familiar, I believe, with Mr. McCray? A. Yes, sir.

Q. And, as a matter of fact, you have in your hand the records pertaining to Mr. McCray incident to this particular fire, is that correct? A. Yes, sir.

Q. And I call your attention to the report of January 1st, 1972, is this report in your handwriting? A. Yes, sir.

Q. And that was the day of the fire? A. Yes, sir.

Q. And these records are made in the ordinary course of business at the Penitentiary? A. Yes, sir.

Q. And relate to records that must be kept in the ordinary course of business at the Penitentiary? A. Yes, sir.

Q. Now, I would ask that you read just the report of January 1st, 1972, which is in your handwriting. A. My writing is poor.

Pulse 130. Respiration 20 to 24. Patient states (498) he is already known to be an asthmatic. Given 30 cc of Elixophyllin. Patient very arrogant and refusing treatment of cold compresses, states he inhaled smoke from a fire in his cell. Officers stated he set fire to his cell and had a good big blaze before they could get an extinguisher. Refused eye compresses.

And I put, myself, a question mark because I couldn't imagine anyone refusing treatment.

Respirations became normal in depth and rate as soon as mind diverted by asking questions. No blisters or serious burned areas could be detected. Officer Martin applied cold compresses and bacitracin ointment to all areas stated by patient to have been burned or hurting. Eyes irrigated with cold water, ears washed out with cold water. No further symptoms. Condition seems satisfactory.

And at 11:15, Dr. Holljes advised of patient being placed in MO.

Q. All right.

Now, does it show what time Mr. McCray was first seen? A. I have 9:30.

Q. 9:30.

And what time was he released from the dispensary? A. Well, I'm not sure, there's only one nurse on duty on the holiday, or a weekend, and it was 11:15 — while (499) this was going on there were still inmates to be waited on in the dispensary, and it was 11:15 when I got a chance to call Dr. Holljes.

Q. Do you recall whether or not Mr. McCray was still present in the dispensary when you called Dr. Holljes? A. I can't remember.

(Mr. Rosenthal) Your Honor please, we would move this record to be introduced into evidence as Defendant's next exhibit, I believe it's Number 7.

(Mr. Morgan) May I see it, please?

(Handed.)

(Mr. Morgan) The Plaintiff has no objection to that.

(The Court) All right.

(The Clerk) Photo copy marked Defendant's Exhibit Number 7.

(Document was marked Defendant's Exhibit Number 7.)

(Mr. Rosenthal) Shall we continue, Your Honor, or do you want to see the report?

(The Court) Yes.

By Mr. Rosenthal:

Q. Referring to my copy, Mrs. Weber, when was the next time, according to the hospital records of the Penitentiary, that Mr. McCray was seen by a physician? (500) A. On January 4th he was seen by Dr. Wood.

Q. And the records relate that he was seen for a rash? A. Yes, sir. He complained of a rash on his face.

(Mr. Rosenthal) We would have no further questions, Your Honor.

You might have to hold that in case counsel has other questions.

(Mr. Morgan) Yes, may I see that?

(The Witness) Yes, sir.

(Handed.)

(Mr. Morgan) Oh, this is the same.

(The Witness) Yes, sir.

(Mr. Morgan) I see.

CROSS EXAMINATION

By Mr. Morgan:

Q. Mrs. Weber, you stated this is your handwriting? A. Yes, sir.

Q. Okay.

And this entry is made at what time, does it say? A. At 9:30, in the morning.

Q. 9:30? A. Yes, sir.

Q. Have you been in court all morning, Mrs. Weber, and heard the testimony? A. I got here just about 11:00.

(501) Q. Well, did you hear the testimony concerning the fire and did you hear Mr. Burrell say that the fire was about the most serious he had ever seen at the Penitentiary? A. Yes, sir.

Q. And his description of the photographs? A. Yes, sir.

Q. You state here that Mr. McCray had refused eye compresses.

Then it further states that he apparently — I'm having a little trouble reading your wirting.

Officer Martin applied cold compresses and, what's that, bacitracin ointment? A. Bacitracin.

Q. Bacitracin ointment.

So that medication was given to Mr. McCray, is that right? A. Yes, sir, but we had to — well, it took time, he was resistful, he was very angry and hostile, it took about four times as long to treat, you know, as the average person.

Q. Did he appear very upset? A. Well, he was angry, yes.

Q. He was agitated? A. Angry, yes, sir.

Q. Did he say why he was angry? (502) A. No. Sort of like, you know, blaming us for the fire.

(The Court) Like what?

(The Witness) He acted like he was blaming us for the fire.

By Mr. Morgan:

Q. And then it states here that his eyes were irrigated with cold water and washed out.

All right.

Now, at 11:15 a.m., the entry reads:

Dr. Holljes advised of patient being in MO. Instructed to call Dr. Stewart. No answer at office or home for Dr. Stewart. No further complaints or information from fourth floor.

That would be MO? A. Yes, sir.

Q. Concerning patient by 2:00 p.m. C. Weber, RN.

Now, do you recall ever having gotten in contact with Dr. Stewart about this matter? A. No, sir.

Q. Do you ever recall talking to Dr. Holljes again about the matter? A. No, because it wasn't deemed

necessary. If it had been necessary, I would have had to sit there on the phone and call him.

(503) Q. Well, you called Dr. Holljes one time, didn't you? A. Yes, sir, it's our policy, we always informed Dr. Holljes, when they're put in MO.

Q. And you called Dr. Stewart one time? A. I tried to call him, yes, sir.

Q. When you called both of those doctors, you felt it was necessary to call them, I assume? A. Well, Dr. Holljes is medical and Dr. Stewart is surgical, and Dr. Holljes just wished me to tell Dr. Stewart so that the next time in he would routinely see him.

Q. But you didn't feel it was necessary to call Dr. Holljes? A. I did it because it was our policy.

Q. I see.

Now, next entry is January 4th, 1971, and that was the day on which Mr. McCray had a visit with Dr. Wood, is that right? A. Yes, sir.

(The Court) Well, is that '71, or shouldn't it have been '72, is that a mistake there?

(The Witness) I think that's a mistake, yes, sir.

By Mr. Morgan:

Q. That kind of mistake occurs occasionally around the first of the year? (504) A. Right.

Q. Mrs. Weber, where did these pages come from, again? A. Well, we have sick call cards. You see, the files are kept on the second floor of the hospital.

Q. Ahuh. A. And we have a file cabinet with sick call cards on each person that comes to the dispensary.

Q. I see.

And every time that you would see an inmate, you would make a notation on the sick card? A. Well, we should, we're instructed to do so, but sometimes there are errors and sometimes they're not recorded.

Q. Well, would you say in the majority of cases you do make recordings? A. Yes, sir.

Q. Would you say that based on these records, Mr. McCray was not seen on the second floor, I suppose, at the hospital, between January 1st of 1972 and January 4th, 1972, is that correct? A. No, sir, that would be an assumption, I couldn't say that.

Q. Well, that's what the record shows, doesn't it? A. No, sir. You see, he was in MO, he would be seen as a patient—

(505) Q. I'm sorry? A. These are strictly for the dispensary.

Q. Yes. A. But when a patient is a patient in any other area than the dispensary, he would have a regular chart, and a doctor would dictate it.

Q. Oh, I see, that's not your duty at all, is that it? A. Well, I couldn't recall if I was on duty the rest of the week, I don't know this. You see, I don't have the chart, all I have is the card.

Q. Did you bring any records with you indicating— A. No, sir, I tried to get his chart, but they told me it had been signed out.

I couldn't refresh my memory on this.

Q. I see.

Mrs. Weber, did you state on direct testimony that these records in some way indicated when Mr. McCray was removed from MO, or didn't you state that? A. I couldn't say that, no, sir.

Q. I see.

But this does indicate when he came in? A. Yes, sir.

(Mr. Morgan) Fine.

I have no other questions.

Could I have just a second?

(506) We have no other questions.

Thank you.

(Mr. Rosenthal) We have no questions, Your Honor.

We would request Mrs. Weber be excused for the day.

(The Court) Fine.

(The Clerk) You may step down.

(The Court) All right, we will recess until 2:15.

(Whereupon, at 1:10 o'clock p.m., a luncheon recess was taken until 2:15 o'clock p.m.)

(507) AFTERNOON SESSION

(Met, pursuant to the taking of the recess, at 2:15 o'clock p.m.)

(The Court) All right.

Let's see, are you—

(Mr. Rosenthal) I have finished with Mrs. Weber, Your Honor.

The doctor is here, I understand he has an exam, we have some other exhibits to introduce, I think we ought to take the doctor first.

(Mr. Morgan) That's fine with me, Your Honor.

(The Court) Very well.

(Mr. Morgan) Dr. Gould.

DR. WILLIAM MICHAEL GOULD,

was called as a witness for and on behalf of the Plaintiff, and, having been first duly sworn, testified as follows:

(The Clerk) State your name, Doctor.

(The Witness) Dr. William Michael Gould, G-o-u-l-d.

(The Clerk) Thank you.

DIRECT EXAMINATION

By Mr. Morgan:

Q. May I have just a second, Your Honor, to find the appropriate pages of the medical reports.

(508) Dr. Gould, what is your profession? A. I'm a physician-dermatologist, specialist in dermatology.

Q. Could you explain to the Court what educational background you have? A. Well, I'm—

(Mr. Rosenthal) Your Honor please, we would submit that the doctor is qualified unless Mr. Morgan wants it on the record for a special purpose.

(Mr. Morgan) I think it would only take ten seconds, Your Honor.

(The Court) All right.

(The Witness) Well, an MD Degree from the University of Maryland, plus three years additional training in the specialty of dermatology, and I've been a Consultant for the Maryland Penitentiary for two years now in dermatology.

By Mr. Morgan:

Q. Dr. Gould, do you know the Plaintiff in this case, Milton McCray? A. Yes.

Q. Do you recall approximately the first time you had an occasion to meet Mr. McCray? A. It's hard to say, I would have to look at the records, but it was not in association with this case, he was a patient of mine before this incident arose.

(509) Q. You are familiar with the subject matter of this case? A. Right.

Q. And you had seen Mr. McCray prior to that time? A. Right.

Q. Had you seen him in your professional capacity as a dermatologist? A. Right.

Q. If you recall, and I can show you the records easily enough to refresh your memory if you need it, if you recall, during that — during the visits that you had with Mr. McCray prior to this incident, what was the nature of Mr. McCray's physical problem? A. He was suffering from neurodermatitis.

(The Court) Neuro, what?

(The Witness) Neurodermatitis.

This is a chronic eczema that is related a lot to nervous tension and is a chronic, itching type of eruption, it may be generalized or localized.

By Mr. Morgan:

Q. And your contacts with Mr. McCray had to do with that particular injury? A. Right.

Q. All right, sir.

Directing your attention particularly to the (510) incident we're concerned with here, I show you this file and ask you, first, if you can identify the file itself, and, second, if you can identify this page to which the file is open? A. Right.

Well, the file, of course, is his records. The pages you have opened here, it's my description of his problem when I was called to see him on January 13th of 1972.

Q. These are his medical records from the Penitentiary? A. Right.

Q. And this notation that you're referring to. January 13th, is that a notation that was written by you? A. Right.

Q. And it would have been written the same day that you— A. It was dictated that day and typed up within a week or so.

Q. All right, sir.

I think the simplest way to handle this would be if you would read through that notation that you made and in layman's terms explain exactly what you found with regard to Mr. McCray's physical condition and what you prescribed at that time. A. Okay.

I was called to see him approximately two weeks (511) after a fire in his cell, and at the time that I saw him on January 13th he had crusted lesions, crusted sores on each cheek and on his left ear and on—

(The Court) Wait a minute.

Crusted sores on each cheek?

(The Witness) On each cheek, on his left ear, and a small amount on his right ear, and he had a small area on the right side of his back, and he also had some sores on the knuckles of the right hand, and he also had some crusting inside of his nostrils, just inside his nostrils.

In examining him on the left ear, there was some initial peeling of the skin and yellowish crust in this area, and it appeared to be well healing at that time.

There was a tiny scar present over the right ear, but no secondary infection was present.

Symmetrically placed on each cheek, extending down to the corners of the nose, there was some blistering with yellowish secondarily infected crusting, and he had similar areas between his nostrils and inside the — just inside the nostrils.

And, also, he had an area of secondary infection, a crusted area on the right side of his back beneath the clavicle.

There was some hypopigmentation, in other words, (512) decreased pigment, on the knuckles of his right hand, which appeared to be healing, and one on the knuckle of the first finger, which appeared to be slightly infected.

He also had a healing burn on the right forearm, which did not appear to be infected at that time.

At that time, the diagnosis was first degree burns with some secondary pyoderm, which is a term meaning infection of the skin.

At that time, I prescribed some antibiotic ointment and washing the area with Gamophen, which is a type of antiseptic soap.

By Mr. Morgan:

Q. At the time you examined Mr. McCray, Dr. Gould, were you able to form a professional opinion of how the injuries that you saw on Mr. McCray were caused? A. They appeared to be burns, very typical burns.

Q. Is there any question in your mind that they were caused by burns? A. No.

Q. Dr. Gould, you mentioned in medical terms here, I believe, that there was an infection over perhaps some and perhaps all of these burns, is that correct? A. Yes, over some of them, yes.

(The Court) What?

(The Witness) Over some of them.

(513) By Mr. Morgan:

Q. And in your professional opinion, what was the cause of that infection? A. Well, infection is not uncommon on any burn, and, of course, you pick up infection in any area of skin injury, whether it be from a burn, or a cut, or a scrape, so a common — infections are a common result of any injury to the skin, so the infection comes from bacteria and bacteria come from everywhere, it could be just in the air, from the walls, it can be from inside of the nose.

Many people, most people carry bacteria inside their nose and it can infect other areas of the body if it has been injured.

Q. Dr. Gould, this report is dated January 13th of 1972, did you see Mr. McCray at any other time between January 1st and January 13th of 1972? A. No.

Q. There's no notation in the records there that you did see him any other time, is there? A. No.

Q. Dr. Gould, in your professional opinion, can you state at this time with a reasonable degree of medical certainty the nature of these injuries at the time they were inflicted on January 1st? A. I don't understand the question.

(514) Q. Well, I will rephrase the question.

In your professional opinion, are you able to state with a reasonable degree of medical certainty the extent of pain that the burns that you saw on January 13th would have caused at the time when they were fresh on January 1st?

(Mr. Rosenthal) I object, Your Honor.

(The Court) Oh, objection sustained.

(Mr. Rosenthal) I think it's a conclusion that these burns were placed on January 1st, also.

(Mr. Morgan) Well, if that's the basis of the objection—

(Mr. Rosenthal) No, it's not.

(Mr. Morgan) — I think it's quite clear that—

(Mr. Rosenthal) It's secondary.

(Mr. Morgan) Well, what is the basis of the objection?

(Mr. Rosenthal) The basis of the objection is—

(The Court) Well, you're asking him about the reasonable degree of pain, and the question resolves itself in a subjective matter and the doctor can tell people have a different threshold of pain.

Ask him with a reasonable degree of medical certainty how they occurred, might be — how the injuries which he saw — also ask him when they occurred.

(515) By Mr. Morgan:

Q. Dr. Gould, I believe you have already testified that you can tell with a reasonable degree of medical certainty, and, in fact, you said it was absolutely clear that the injury had been caused by burns, could you determine within a reasonable degree of medical certainty approximately when the burns occurred? A. Well, it's hard to pinpoint it, I'd say anywhere from — they were probably older than a week, that's all I can say with certainty.

Of course, I knew the history when I was called to see him, you know, as to when the burns occurred.

In looking at the burns, they looked like they had been there at least a week or so, some of them had already begun to heal and it's reasonable to say that it probably happened at least a week before I saw him.

Q. Dr. Gould, you have the records there, perhaps you could refresh your recollection by looking at them, approximately how many times prior to January 13th had you seen Mr. McCray concerning any other problem? A. The first time he had been seen, of course, followed by the dermatologist, Dr. Davis, who preceded me at the Penitentiary, I saw him for the first time on July 1st, 1971, and at that — since that time, or between that time and the time that this present episode occurred, I saw (516) him one, two, three, four — four times — a total of five times.

Q. The January time would have been the fifth of the sixth? A. Yes, that I had seen him.

Q. Yes, fifth, or yes, sixth? A. That would have been the sixth time, and, of course, I've seen him about four or five times since then.

Q. You stated, Dr. Gould, that the nature of Mr. McCray's medical problems, on all the other occasions on which you had seen him, had been neurodermatitis? A. Right, correct.

Q. Could you explain in your professional opinion the basis for the neurodermatitis which you found in Mr. McCray? A. Well, by implication, neurodermatitis is related to excessive emotional tension, nervous tension. No one really knows whether this is the direct cause of the condition, but it seems to be related to it.

The condition is a chronic itching, scaling type of eruption that many times the patients, if they're under emotional stress or tension, will have severe itching and difficulty with it and at other times when stress has eased up or if you are giving tranquilizer therapy, they'll have less trouble with it.

So, it's definitely related to tension, but whether (517) it causes it, or not, no one knows.

Q. Had you, prior to this time, formed an opinion as to Mr. McCray concerning the degree to which he is a tense person?

(Mr. Rosenthal) I object, Your Honor, as to relevancy.

(The Court) Yes.

I don't know what you're driving at, Counsellor.

(Mr. Morgan) Well, Your Honor, I think these questions are relevant. As Your Honor stated, the intensity of the suffering that Mr. McCray had as a result of these burns perhaps is related to the level of tolerance that he had to this kind of thing, and Dr. Gould having examined him four or five times in the past, I think is in a position to testify as to whether these kinds of burns would affect Mr. McCray in a way

different or the same or — different or the same as they would affect another person.

(The Court) You can't answer that, can you?

(The Witness) Well, I can read from my notes, even from the first time, concerning my feelings as far as the relationship between his dermatitis, his chronic dermatitis and anxiety and tension.

(The Court) Yes, that's all you know. You don't know anything else, as you say, you don't know—

(The Witness) Again—

(518) (The Court) Except it's related, apparently, to that sort of thing, of condition, therefore, you can't tell what the degree of pain is that he feels, can you, or anybody else

(The Witness) No, it's subjective.

(The Court) What?

(The Witness) Strictly subjective.

(The Court) Sure.

By Mr. Morgan:

Q. Dr. Gould, can you determine with a reasonable degree of medical certainty whether the burns you saw on Mr. McCray are the kind of burns that would in the normal situation cause at least a degree, an unsubstantiable degree of pain?

(Mr. Rosenthal) I object, Your Honor. I think the Plaintiff may be able to testify, but I'm not sure the doctor can.

(The Court) Well, it's reasonable to assume that he would say that it would cause pain, isn't it?

(The Witness) I would say that this is the type of burn, a first degree burn, that you might expect to get if you put your hand on a hot stove, a nonblistering type of burn that, as you know, is painful. The pain is usually over a short period of time, I would say. It's reasonable to assume that most of the pain, if treated with cold (519) conpresses, or something, is of temporary nature, it shouldn't last any more than several days, at the most.

By Mr. Morgan:

Q. You stated this kind of a burn — let me — you stated that the pain itself would not last more than a couple of days? A. It shouldn't.

Q. But the physical manifestations of the burn, you've already testified, have lasted some period longer, is that correct? A. He had complicated burns.

(Mr. Rosenthal) I don't remember him testifying to that, Your Honor.

(Mr. Morgan) Well, I think maybe I interpreted what he said inasmuch as—

(The Court) Yes.

Well, he can testify as to that, Mr. Morgan, but you can't.

By Mr. Morgan:

Q. Dr. Gould, you testified just a second ago, I believe, that the kind of burns which you saw are not the kind of burns that cause blistering, is that correct? A. He had some blistering, as I remember reading it, I think, on his — some crusting, what appeared to have been blisters — let me just check it.

(520) On the cheeks, I had noticed some crusting that looked like they were blisters at the time, the others were just areas of healing, a burn.

Q. Is it possible, Doctor, to determine with a reasonable degree of medical certainty the length of time after burns such as these were inflicted that blistering would occur? A. Of course, it depends on the heat, but, generally, a burn can develop blisters anywhere from the same day up to two or three days after the burn, the blisters can appear.

Q. What would you say would be the minimum period of time? A. I would say a minimum, maybe I'd say three hours or so. If he had a severe, like second degree burns, the blistering should appear within several hours. In a first degree burn, it's sort of in between, it could appear anywhere up to several days.

Q. I see.

In other words, the minimum period of time, then, would be for — would be three hours, did you say? A. Several hours.

Q. Several hours.

(Mr. Morgan) I have no other questions, Dr. Gould.

(521) I do have a copy of the page of the medical records you have been reading from that I would like to introduce into evidence.

(The Court) What is the number of that, Mr. Graham?

(The Clerk) Are you offering it in evidence?

(Mr. Morgan) Yes.

(The Clerk) Plaintiff's Exhibit Number 5.

(Document was marked Plaintiff's Exhibit Number 5.)

(The Court) All right.

CROSS EXAMINATION

By Mr. Rosenthal:

Q. Dr. Gould, in your report, you make mention of an area on his back.

Now, this, also, was caused by the fire? A. Apparently.

Q. Is it possible that these wounds or infections could have been caused by something other than actual fire burns; in other words, like from a light that someone touched, or touched to themselves, a hot light, a light bulb, I should say? A. Certainly could have been, they were burns, and, you know, how they were — there are many ways to inflict burns, they all look the same.

Q. Now, referring, also, to the same book, I refer to (522) your report of October 7, 1971, and these records, Doctor, are kept in the ordinary course of business at the Penitentiary and it is the medical records of Mr. McCray, is that correct? A. Yes.

Q. Right.

Now, would you please read this report, very briefly; it's rather short, Your Honor. A. This report was written to Mr. Decker at the Penitentiary, and—

(Mr. Morgan) Excuse me, Dr. Gould.

Do you intend to introduce this report in evidence?

(Mr. Rosenthal) Yes, I will introduce it, Your Honor, I do not have the photo copies here, but would reserve the right to introduce that.

(Mr. Morgan) Well, the Plaintiff would object on the basis of relevancy, Your Honor.

If what we're talking about is medical reports that are in the medical file, that we would have no objection to. If it's a memorandum to the Warden concerning Mr. McCray, concerning an incident unrelated to these incidents, then we would say it's not relevant.

(Mr. Rosenthal) Your Honor please, I think it is related because it goes into the neurodermatitis that the (523) doctor was referring to.

(The Court) I will permit it.

Objection overruled.

By Mr. Rosenthal:

Q. Just summarize that, very briefly. A. Okay.

Q. If you don't want to read it. A. I had been following Mr. McCray on a number of occasions and this was written on October 7th, 1971, and I stated that this patient has been seen here on five occasions since July 1st, 1971. He has been followed for a chronic neurodermatitis, which has been under control, and most of these lesions, or lesions that he has, are self-inflicted.

By this, we mean caused by his own scratching, not deliberately self-inflicted, but involuntarily self-inflicted.

In the past three or four times that he has been here, he has been threatening and very abusive in language concerning the fact that I will not give him a pass to grow a beard.

(The Court) What?

(The Witness) To grow a beard.

The patient's face problem is extremely mild, and he shows only an occasional acne pimple. I explained to him that I do not give shaving passes for this mild condition, only for keloid formation — which is scar formation, it's (524) a form of scar tissue.

Due to this patient's threatening manner, I am discharging him from clinic and will not see him again.

This was on October 7, 1971, and I didn't see him after that until the time of the present incident.

By Mr. Rosenthal:

Q. Now, Doctor, are you familiar with the date of the fire? A. No.

I'm familiar with the date I saw him.

Q. All right, if I told you — well, I will tell you that the fire took place on January 1, 1972, and I show you here a report of Dr. Holljes, one dated January 6, 1972, and the other dated January 18, 1972.

Now, the January 6 would have been after the fire, Doctor, and before you saw him on the 13th, is that correct? A. Correct.

(Mr. Rosenthal) If Your Honor please, we would — and these do refer directly to the fire, we would also ask that the two reports of Dr. Holljes be introduced into evidence, and I will have to get copies for the Court and for counsel.

(The Court) All right.

Now, wait a minute, you're getting a copy of (525) October 7, 1971, and then you've got — show them to Mr. Graham and let's get them marked, this will be Defendant's exhibit what, Mr. Graham, the October 7 report?

(The Clerk) That will be Defendant's Exhibit Number 8.

(Document was marked Defendant's Exhibit Number 8.)

(The Clerk) Dr. Gould's report — this.

(The Court) What?

(Mr. Rosenthal) The other ones will be Number 9, Your Honor.

(The Court) What date are they?

(Mr. Rosenthal) They are January 6, 1972, and January 18, 1972, both by Dr. Holljes, January 6 and 18, Your Honor.

(The Clerk) That will be Defendant's Exhibit Number 9, and you will give me the photo copies.

(Document was marked Defendant's Exhibit Number 9.)

(Mr. Morgan) Your Honor, for the record, the Plaintiff would object to the admission of those two reports.

(The Court) The basis, Counsellor, of the objection.

(Mr. Morgan) The basis of the objection, Your Honor, would be that Dr. Holljes is the present Penitentiary (526) doctor and he is available to come and testify. These documents are hearsay and we can see no reason why, if they are to be introduced and if they are relevant, that Dr. Holljes can't come and be cross-examined on them.

(Mr. Rosenthal) Your Honor please, Dr. Gould has already testified that these are the ordinary records kept in the—

(The Court) I know, but—

(Mr. Rosenthal) I can bring Dr. Holljes over.

(The Court) All right, you better do that.

Read the report and then we can bring him over, too.

You can bring him over and introduce those reports, Counsellor.

(Mr. Rosenthal) Yes.

(The Court) Introduce the reports at that time, but if you want Dr. Gould to comment on the reports, I see no reason why he can't.

(Mr. Rosenthal) Yes, I would like him to comment on the report of Dr. Holljes dated January 6.

(The Court) Read it out loud, will you, Doctor?

(The Witness) The report is dated January 6, Dr. Holljes, and I'm just quoting here.

This patient is reported to me. Said he set his (527) cell on fire and that he was taken to the hospital where he was seen by a Dr. Wood. Treatment was prescribed for him and x-ray of the chest was ordered. Later he was transferred to the south wing security cell. Apparently the chest x-ray has not been done yet. Patient seen today and seemed normal. Complains that his dermatology medication has been discontinued. This was prior medication. He has some lesions on his face which look like granulated. Lesions may be the result of burns secondarily infected. He should be seen by Dr. Gould at his next clinic and a chest x-ray should be obtained. Also I note that Mr. Musk is seeing him and direct arrangements are being made for him to see the psychiatrist.

Mr. Musk is the psychologist.

(Mr. Rosenthal) That will be all that we would have of Dr. Gould, Your Honor.

(The Court) Do you want Dr. Gould over, Mr. Morgan?

(Mr. Morgan) Dr. Holljes, you mean, Your Honor?

(The Court) Dr. Holljes.

(Mr. Morgan) As Dr. Gould was reading that report, I admit I haven't read it in a while, if I could have just a second, Your Honor, to reread what he just read, we may withdraw our objection.

(The Court) All right.

(Mr. Morgan) Your Honor, of the two entries here, (528) we would — and I think there is already evidence in the case concerning this, a visit by Dr. Wood occurred on January 4th.

(The Court) Yes.

(Mr. Morgan) And if the State is willing to stipulate that the visit by Dr. Wood referred to here is the

January 4th visit, then we will withdraw our objection to these two documents.

(The Court) All right, then you won't need Dr. Holljes?

(Mr. Morgan) We won't need Dr. Holljes.

(The Court) All right.

(Mr. Rosenthal) We so stipulate, Your Honor.

(The Court) Now, are you through with the doctor?

(Mr. Rosenthal) Yes, sir.

(The Court) Do you want to ask Dr. Gould any more?

(Mr. Morgan) I may have just one or two more questions, Your Honor.

(The Court) All right.

REDIRECT EXAMINATION

By Mr. Morgan:

Q. Dr. Gould, are you familiar with the mental observation cells at the Maryland Penitentiary? A. Yes.

(Mr. Rosenthal) Your Honor please, I would object, (529) I don't think this was covered on direct or cross.

(The Court) Nevertheless, I will permit it.

Objection overruled.

By Mr. Morgan:

Q. Are you familiar with the mental observation cells, have you actually seen the cells yourself? A. Yes.

Q. Are you familiar with the mental observation cell, Number 8, specifically? A. No.

Q. Is there any difference between the mental observation cells? A. Not that I'm aware of, I've only seen them once.

Q. On that one occasion when you saw them, could you describe what you saw? A. The cells themselves have a solid iron door, they have a double door, a solid iron door which when opened is then — opens to a

barred door which you can then see through, the cells themselves are bare, they have a bare tile floor, and they have essentially nothing in them, other than the tile floor and sort of a rudimentary toilet.

Q. Dr. Gould, can you determine within a reasonable degree of medical certainty whether confinement in such a cell of a person with burns, such as those you diagnosed on Mr. McCray, would exacerbate the nature of the injury?

(530) (Mr. Rosenthal) I would object, Your Honor.

(The Court) Yes.

Objection sustained.

I don't think — you're asking a hypothetical question and you've left out some of the thing that should be interpolated into that question, Counsellor.

By Mr. Morgan:

Q. Dr. Gould, the testimony in this case has indicated that Mr. McCray, the Plaintiff, was placed in the mental observation cells on January 1st, 1972, in the morning, and was released from there about the same time on January 3rd, during that period of time he was in a mental observation cell, as you described, barren of any fixtures or barren of any other belonging, and without clothing.

Based on those facts, assuming that they are the facts, based on the condition of the mental observation cell, the physical condition of the mental observation cell as you saw it, can you determine within a reasonable degree of medical certainty whether a person who was confined in that cell under those conditions for a period of two days with the burns as you saw then on Mr. McCray on January 13, whether that confinement would tend to exacerbate the severity of the burns?

(Mr. Rosenthal) If Your Honor please, we would object because I think the hypothetical takes for granted (531) that the type of burns Dr. Gould saw on the 13th did, in fact, exist on the 1st.

(The Court) Yes, it does; nor does it take into consideration any of the treatment which was given him immediately when he came out of the fire and the report which is contained in Exhibit Number 7.

(Mr. Morgan) Well, in that case, Your Honor, we'll withdraw that question.

Your Honor, we're having some difficulty determining which is Exhibit 7.

(The Court) It's the nurse's report, plus Dr. Wood's report.

(Mr. Morgan) I see.

All right, Your Honor.

(The Court) Have you got a copy of Exhibit 7 — it's this thing here, Counsellor.

(Mr. Morgan) Oh, the nurse's report.

(The Court) And also Dr. Wood's report.

(Mr. Morgan) I see.

All right, Your Honor, we have no further questions.

(The Court) All right, would you hand the doctor your copy, one of you, I want to ask him some questions.

It's Defendant's Exhibit 7.

(Mr. Rosenthal) I think I gave my copy to the (532) nurse and I don't think she gave it back.

(The Court) Do you have one?

(Mr. Morgan) It seems like we did, Your Honor, but I'm not sure where it is.

(Handed to the doctor.)

(The Court) All right, Doctor, take a look at that where you see 1/1/72, 0930, do you see it up there?

(The Witness) Right.

(The Court) Now, read that out loud to us, will you?

(The Witness) This is the nurse's notes.

(The Court) Yes.

(The Witness) Pulse 130, respiration 20 to 24. Patient states he is already known to be an asthmatic. Given 30cc Elixophyllin — which is an anti-asthma medicine.

Patient very arrogant and refusing treatment of cold compresses, states that he inhaled smoke from a fire in his cell. Officers stated he set fire to his cell, he had a good big blaze before they could get an extinguisher — got a fire extinguisher.

(The Court) Got an extinguisher.

(The Witness) I think got a fire extinguisher.

(The Court) Yes.

(The Witness) He refused eye compresses. Respira- (533) tions became normal in depth and rate as soon as mind diverted by asking questions. No blisters or serious burned areas could be detected. Officer Martin applied cold compresses and bacitracin ointment to all areas—

(The Court) Now, wait a minute, what is that ointment?

(The Witness) Bacitracin is an antibiotic ointment.

(The Court) Yes.

In other words, it was to treat for the possible infection?

(The Witness) Right.

(The Court) Okay.

(The Witness) In other words, they said they didn't see any blisters or serious burned areas. Officer Martin applied cold compresses and bacitracin ointment to all areas stated by patient to have been burned or hurting. Eyes were irrigated with cold water, ears were washed out with cold water. No further symptoms. Condition seems satisfactory.

Signed by Mrs. Weber, RN.

And then, 11:15, Dr. Holljes was advised, this was a.m. Dr. Holljes advised of patient being in MO — mental observation; and he instructed the nurse to call Dr. Stewart. She was not able — there was no answer at the office or home for Dr. Stewart. No further complaints or (534) information from fourth floor concerning patient by 2:00 p.m.

Again signed by Mrs. Weber.

(The Court) All right.

Now, that treatment that you see that was given there, the notes indicate, would that be the ordinary treatment that would be given for burns?

(The Witness) Yes, cold compresses, especially.

(The Court) Yes.

All right.

Now, read that notation down there, 1/4/71, which we all agree is really January 4th, 1972.

(The Witness) Yes.

This was a note, says, temperature 98.6, oral. Above noted, meaning he read the above note I just read.

Patient says he has cough. Also complains of rash on face. Blood pressure 120/80. Pulse 80, regular. Respirations 12. H-e-e-n-t, meaning head, eyes, ears, nose and throat, unremarkable. Chest — bronchi bilateral clear on coughing. This bronchi is a type of rattle or wheeze and when they clear on coughing it usually means your upper respiratory, not in the lungs itself.

(The Court) Yes.

(The Witness) Heart is n-s-r, which means normal sinus rhythm, normal heart rate. No — there's an abbreviation (535) for murmurs, heart murmers. The abdomen is soft, nontender. Examining his skin—

(The Court) Yes.

(The Witness) Patient has erythemia — redness — over the malar — which is the cheeks — area of face.

And that was all that was noted.

And than disposition, he ordered a chest x-ray, he ordered the face washed with pHisoHex and water, and—

(The Court) What does that mean, now?

(The Witness) pHisoHex is just a — not FDA approved but it's an antiseptic soap to prevent secondary infection.

His face was washed with that, and he ordered some hydrocortisone cream one per cent. This is a cortisone cream to cut down on irritations.

(The Court) Ahuh.

And then he got sick call in the morning?

(The Witness) Sick call in the morning.

(The Court) Is that treatment the ordinary treatment, reasonable treatment, that should be given in this particular situation?

(The Witness) Yes, sir, I would say it is.

(The Court) And you don't notice anything unusual about his condition at that time, right?

(The Witness) Not from the description on the chart, no.

(536) (The Court) So, this treatment was perfectly proper and reasonable under the circumstances, according to what a doctor would ordinarily prescribe?

(The Witness) Yes.

(The Court) And do?

(The Witness) Yes.

(The Court) Okay.

(Mr. Morgan) I just have one other question.

By Mr. Morgan:

Q. Dr. Gould, the treatment that you read there and described as being the appropriate treatment, is that the kind of treatment that should be administered on one occasion after a person is burned, or is it the kind of treatment that should be administered over a continuing period of time? A. That depends on the, you know, the burn itself, but I would say that any type of treatment like this, certainly is generally continued for several, three or four days, maybe.

Q. Would you say that it would be proper to continue it for a three or four-day period? A. Yes.

Q. It would be medically sound practice to continue it? A. Sure.

(537) (Mr. Morgan) Fine.

Well, thank you, Dr. Gould.

RECROSS EXAMINATION

By Mr. Rosenthal:

Q. Just one last question, Doctor.

Assuming, now, the records so far show that on January 4th he was treated, January 1st, excuse me, by Mrs. Weber and Sgt. Martin.

On January 4th, he was treated by Dr. Wood.

On January 6th, which is the record you just read, he was seen by Dr. Holljes.

So that was a period of five days, he was seen three times within six days.

Would this seem to be rather normal, or sufficient? A. Well, yes.

Q. Could it be sufficient? A. Certainly, in view of what was described here.

Q. All right.

Now, one last question.

With the neurodermatitis that Mr. McCray has had since you've known him, if there was some minor irritation that was treated on these three days, but then continuous scratching of the cheeks, or whatever it may be, could this have been what caused the actual infection to develop?

(538) (Mr. Morgan) Your Honor, I object to that question the grounds that Mr. Rosenthal stated in the question, minor irritation, and I think the implication is that a minor irritation is being increased in intensity by the person's own—

(The Court) I agree with you, Counsellor.

Objection sustained.

However, I think if the question is changed to take into consideration the condition described in the note of 1/1/72 and 1/4/72, would this be—

(Mr. Rosenthal) And 1/6/72, Your Honor.

(The Court) Yes, and 1/6/72.

(The Witness) I can't specifically relate the two conditions.

In other words, the fact that he had neurodermatitis in another area wouldn't necessarily mean he would be scratching a burn, which is not related to neurodermatitis; in other words, he had burned areas that were not related to where his chronic neurodermatitis was, and I can't see that the neurodermatitis would make him scratch the burns any more.

By Mr. Rosenthal:

Q. Well, would not there be a condition if someone were sunburned, Doctor, isn't there a scratching, peeling sensation? (539) A. Sure.

Q. And could this not lead from a standpoint, considering the reports to the Plaintiff following the same course of action of someone who would be sunburned? A. Yes, you can equate the two, sunburn and this type of burn.

(Mr. Rosenthal) I have no further questions, Your Honor.

(The Court) All right, do you have anything?

(Mr. Morgan) No, Your Honor, we don't.

(The Court) Thank you, Doctor.

(Mr. Rosenthal) Thank you very much.

(Mr. Morgan) Thank you, Dr. Gould.

(Mr. Morgan) Your Honor, we have no further witnesses, and I believe the State has also closed it case.

I would like to ask Mr. McCray a few questions on rebuttal.

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(540) MILTON McCRAY,

the Plaintiff, resumed the witness stand, and, having been previously duly sworn, testified further, as follows:

DIRECT EXAMINATION

By Mr. Morgan:

Q. Mr. McCray, the medical records that have been introduced in this case as part of the Defendant's exhibits, I will read two entries to you from them, and ask you if they are correct.

I'm not sure of the number of this exhibit, but it deals with Pages 51, 52 and 53 of the hospital—

(The Court) Yes, 51, 52 and 53 isn't it?

(Mr. Morgan) As a matter of fact, this is Defendant's Exhibit 2C.

By Mr. Morgan:

Q. It states at 2:00 o'clock, Mr. McCray, on January 1st, 1972, the first day on which you were in MO:

All inmates received water, and Inmates James Hawkins and Milton McCray received medication.

Did you receive medication at 2:00 o'clock on January 1st in MO? A. No medication.

Q. You did not.

Q. Of any kind? (541) A. None at all.

My request for medication was denied by the officer because according to him he was instructed not to give me anything until I saw a doctor.

Q. On January 2nd, Mr. McCray, at 8:00 o'clock a.m. on the 8:00 to 4:00 shift:

Roger Ray, Alphonso Bunn, Albert Daniels received medication in their food, and James Hawkins, Milton McCray, received medication as prescribed.

At 8:00 o'clock on January 2nd, 1972, Mr. McCray, did you receive medication of any kind? A. No medication, I didn't receive any medication.

Q. Mr. McCray, in the other exhibits introduced this morning, there was a notation concerning MO, and I believe January 1st, 1972 was the date, indicating that MO, not listing specific inmates, but saying, MO was bathed, shaved and hair cuts, January 1st, 1972.

Did you receive any of those three things on January 1st, 1972? A. I didn't. I don't know about any other inmates. I didn't see any other inmates being bathed at that time.

Q. Bathed, shaved or hair cut? A. Bathed, shaved or a hair cut during that time.

If they did, I would have — as bad as I wanted a bath, I would remember, and requested it.

(542) (Mr. Morgan) Thank you, Mr. McCray.

No other questions.

(The Court) Now, Mr. McCray, after you returned back to — after you got out of MO, where did you go?

(The Witness) Back to south wing.

(The Court) South wing?

(The Witness) Yes, sir.

(The Court) And did you receive a bath when you got back to south wing?

(The Witness) No, not until that Saturday, that was the day of the shower, during that time, I didn't get any special shower, no.

(The Court) Did you get a special shower on the 6th of January?

(The Witness) On the 6th of January?

(The Court) That would have been Thursday, or something, wouldn't it?

(The Witness) No; no, sir.

(The Court) That's the day you went and saw Dr. Holljes, wasn't it?

(The Witness) I have heard him refer to me seeing Dr. Holljes on that particular day, and I can't even remember seeing Dr. Holljes, at all, during that time.

(The Court) Well, do you think Dr. Holljes just made that up?

(543) (The Witness) I'm not saying he made that up, I'm saying that I can't recall seeing him at that particular time.

(The Court) There is a notation in your medical records there that you did see him.

(The Witness) Dr. Holljes—

(The Court) Do you remember seeing Dr. Wood?

(The Witness) I remember seeing Dr. Wood on the night of the 4th because I made a special request to Mr. — Major Mills on the night shift concerning my burns, and he saw that — I told him that I hadn't seen a doctor since the fire and he made special arrangements. I think, as a matter of fact, he took me down himself.

(The Court) All right, did you have a chest x-ray that night?

(The Witness) No, not by Dr. Wood. Dr. Wood — well, he was a temporary diagnostic doctor and I didn't get any chest x-ray that night, no. He just checked my wounds and he prescribed medication and told me — and he made a notation that I should see the next day's sick call doctor.

(The Court) Well, did you see the sick call doctor the next day?

(The Witness) No; no, sir.

(The Court) Why didn't you?

(544) (The Witness) Nobody took me to see him, or I wasn't called.

(The Court) Now, when did you go back to the regular population?

(The Witness) From that particular incident, I assume it was quite a while, about a month or so, as a result of my charges, I think it was 60 days I was given.

(The Court) Oh, yes, that's right.

(The Witness) I stayed over there for 30 days and they let me off, I think, for good behavior, they evaluate you, put you in front of this — every 30 days, and I was released in 30 days, and sent—

(The Court) All right.

(Mr. Rosenthal) Just two fast questions.

CROSS EXAMINATION

By Mr. Rosenthal:

Q. Mr. McCray, let me try to refresh your memory, you were released from IC on January 27th, 1972, does that sound about right? A. That sounds about right.

Q. And where you testified previously with regard to this case, you testified that you had burns on your cheeks and face and hands, is that correct? A. Yes.

Q. Now, you said your clothing at the bottom of your (545) legs were burned, but you didn't mention — there were no burns on your feet or legs— A. No.

Q. —is that correct? A. None at all.

Q. And there were no burns that you testified to on your back? A. Well, I didn't mention it, but now that — I just remembered after being — after hearing that he gave me — I mean, Dr. Gould, he gave me a complete check that particular day, had to take off all my clothes.

Q. Now, you remembered everything except the burns to your back, is that correct? A. I remember the burns on my back also, I just didn't mention them.

Q. But you mentioned the other burns? A. Yes, because they are the ones that seemed to be most outstanding.

(Mr. Rosenthal) I have no further questions, Your Honor.

(The Court) All right.

(Mr. Morgan) Your Honor, I don't think it's too important, but I notice on the part of the base file we have gathered during discovery, it says, March 2nd, 1972, note, assignment change from segregation to school library, (546) cell change from IC1 to C509.

So, I assume that it was March 2nd, 1972, and not February—

(Mr. Rosenthal) January 27—

(Mr. Morgan) Well, there is nothing in here that indicates that, I don't believe.

I don't think it's too important to worry about it.

Thank you, Mr. McCray.

That's all.

(The Court) All right.

(Mr. Morgan) Your Honor, I have Defendant's 2C, the original, which was loaned us during the luncheon break.

(The Court) All right.

(Mr. Morgan) To make some copies.

Your Honor, I might note with regard to that exhibit, there was some cross-examination of Mr. McCray earlier in the trial concerning his possibly having injured his hand as a result of banging on the doors, or something, and on Page 53 of this particular exhibit, at the 11:00 o'clock entry, it indicates that that, in fact, did happen in MO, but that it was Inmate Bunn who was banging on the door with his right hand and it was he who had to have an x-ray done by Dr. Holljes.

(547) (The Court) All right, anything else, Gentlemen?

(Mr. Morgan) We have nothing else, Your Honor.

Thank you.

(Mr. Rosenthal) Your Honor, during the noon recess, at our luncheon break, I took the liberty of photostating additional copies out of Mr. McCray's base file pertaining to the actual fire incident and the reports that were actually made by the officers, these reports came in, because Mr. Morgan raised the possibility that the other reports that were sent to Dr. Burrell — excuse me, Mr. Burrell, may not have been in due course of business.

We would at this point ask that the actual reports that are in the base file be introduced into evidence as Defendant's exhibits. There are five total pages which incorporate the reports we already have in and we would submit that, the Defendant's exhibit, I think it's either Number 9 or Number 10, A to E.

(Mr. Morgan) We have no objection to the substitution, Your Honor, but I think to try to introduce new evidence at this point without a witness on the stand is improper.

(The Court) Well, he's not doing that, is he?

(Mr. Morgan) Well, I don't know.

If it's just a straight substitution, that's fine.

(The Court) Isn't it just a straight substitution?

(Mr. Rosenthal) No, Your Honor, I think it may be (548) one exhibit that Mr. Burrell testified to that is not included in the base file that—

(The Court) Well, put him back on the stand, let's get it in, I want everything in that you can possibly get in.

ROBERT BURRELL,

resumed the witness stand, and, having been previously duly sworn, testified further, as follows:

(The Court) Go on.

Well, wait a minute, let's get this straight about the substitutions.

What are you substituting?

(Mr. Rosenthal) Your Honor please, you will recall that Mr. Burrell had certain exhibits, reports furnished to him.

(The Court) Yes.

(Mr. Rosenthal) These are by Mr. — Sgt. Witte and by—

(The Court) What are the numbers?

Wait a minute, let me get this.

(Discussion with Clerk, off the record.)

(The Court) Report from Martin, report from Witte, special report from Alston, right?

(Mr. Rosenthal) Yes, sir.

(549) (The Court) And then there's a memo of — which there was no objection to, as I remember it, January 4, just saying that McCray was escorted to Dr. Wood, received treatment for spots he had on his face, after treatment he returned to his quarters.

Now, the others, they are the same reports you got out of the file, right?

(Mr. Rosenthal) Yes, sir, Your Honor.

(The Court) Do you have any — what do you want to do, substitute—

(Mr. Rosenthal) Your Honor, I only made mention of that, Your Honor, because of the possible objection by Mr. Morgan that maybe the records that Mr. Burrell had were not in the ordinary course of business.

We disagree with that, as has the Court.

(The Court) Well, I ruled on that and let them in over Mr. Morgan's objection, saying they were in the ordinary course.

(Mr. Rosenthal) Then we have no further evidence, Your Honor.

(The Court) Well, I thought you had one other, don't you?

What I'm referring to is the January 1st letter to Captain Burrell from Martin. The January 1st letter to Warden from Sgt. Witte.

(550) (Mr. Rosenthal) Yes, sir.

(The Court) The January 1st letter to the adjustment team from Cpl. Alston, right?

(Mr. Rosenthal) Yes, sir.

(The Court) And January the 4th, notation to Capt. Burrell from Major F. R. Clingenpeel.

(The Witness) Clingenpeel, sir.

(The Court) Clingenpeel?

(The Witness) Yes, sir.

(The Court) Now, what is the other?

(Mr. Rosenthal) There's only one, Your Honor, that we would like to introduce at this time and this is the report of—

Was it Officer White? R. O. White?

(The Witness) There is an Officer R. O. White there.

I really don't know what you're talking about.

(The Court) Has Mr. Morgan seen this?

(Mr. Morgan) I think I see it right here.

(The Court) All right.

(Mr. Morgan) And I hate to object to this again, Your Honor, but there is a notation on this page, if they seek to introduce, it says, over, in parentheses, which indicates to me there's something that should be on the back (551) of it, and our discovery indicates the same thing, it seems like the whole thing should be introduced.

(The Court) Sure.

(Mr. Morgan) If it's going to be introduced.

(Mr. Rosenthal) The only thing on the reverse side, Your Honor, which I'll show Mr. Morgan, was the results of the adjustment hearing based on this violation.

(Mr. Morgan) Well, the other side is quite relevant, Your Honor, because this side—

(Mr. Rosenthal) We would have no objection to putting the other side in.

(The Court) Well, all right, put both sides in.

(Mr. Rosenthal) We will have to photostat that, along with the other, Your Honor, and bring it back this afternoon.

(The Court) All right.

(Mr. Rosenthal) But it will be the report of Mr. White, Officer R. O. White, who was an officer at the time, and it is relevant to the fire.

(Mr. Morgan) For the record, Your Honor, we will object to both sides of this report coming in, just simply

because it has nothing to do with Mr. Burrell, it's just a Penitentiary disciplinary report written that has a lot of subjective information. If it's admissible, it certainly is (552) entitled to very little weight, I would think.

(The Court) Well, okay, I will admit it and consider the weight when I have it.

What is the number of it?

(The Clerk) Defendant's Exhibit Number 10.

(Document was marked Defendant's Exhibit Number 10.)

(The Court) All right, you get the other side.

(Mr. Rosenthal) Yes, I shall, Your Honor.

(Shown to Court.)

(The Court) All right.

Now, anything else that you want in, Mr. Morgan, or you, Mr. Rosenthal?

(Mr. Rosenthal) No, but I have one motion to make, Your Honor, if Mr. Morgan is finished. We're finished with formal introduction of any evidence.

(Mr. Morgan) Your Honor, before we get to that, I think I have a copy of the other side myself and we can just—

(The Court) Fine, put it in right now then.

(Mr. Rosenthal) Fine.

(Mr. Morgan) Clear that up.

(Mr. Rosenthal) Counsel for the Defendant has been furnished with the front and back side of what will be the Defendant's Exhibit Number 10.

(553) (The Court) All right.

(Mr. Rosenthal) On behalf of the Defendants, collectively, in this case, Your Honor, the Court has been quite lenient with both sides in the introduction of evidence and testimony because of the various witnesses and exhibits that have come in, and we would move that all of the exhibits, where applicable, that have been introduced, be used in the various cases.

Now, the one that I refer to specifically, Your Honor, is that in this instant case the record of Mr. McCray did come into evidence, and I'm just a little skeptical of the possibility because of the way the transcript reads if, in fact, any appeal is taken, that Mr. McCray, or counsel, or his new counsel, would state, well, no, that evidence came in when we were talking about this hearing, and, therefore, it can't be admissible, and so forth.

(The Court) Well, I think it was agreed that the record would be admissible in all the cases, wasn't it, Mr. Morgan?

(Mr. Morgan) Yes, sir, the record of prior convictions.

(The Court) All right, Mrs. Ross, make a notation to that effect; the record is admitted in all of the four cases we have here.

Okay?

(554) (Mr. Rosenthal) Well, again, Your Honor, the only thing I want to guard against is the possibility that if something came in on Monday, or out of order, that we don't get hit later on, I use that word very loosely, with some objection that it can't be used because it did not come in at the proper point of time.

(The Court) Well, I don't think Mr. Morgan or Mr. McCray argues that, right, Mr. McCray?

(The Plaintiff) I think my counsel is better qualified to answer that.

(The Court) What?

(The Plaintiff) I think my counsel is better qualified to answer that.

(The Court) Well, you've got him speaking for you, but I don't want you to take advantage of—

(Mr. Morgan) I don't think that will be a problem, Your Honor. If there's some piece of evidence that there is some confusion about, we can certainly figure out where it came in, go over the record again and figure out where it came in.

(The Court) I would think so, you've got joint exhibits in here, for example, we've got a number of things, you know, that's in the Rutherford case.

All right, is there anything else, Gentlemen, that you can think of?

(555) Mr. Morgan We have nothing else, Your Honor.

(Mr. Rosenthal) We have nothing further, Your Honor.

(The Court) All right, Gentlemen.

The Court will take it under advisement and I will see counsel in my Chambers after you all get a chance.

All right, do you want to submit a brief on this?

(Mr. Morgan) Yes, Your Honor, on both cases, and we also owe you a memo on exhaustion and a memo in this case.

(The Court) All right.

(Concluded at 3:25 o'clock p.m.)

Washington v. Boslow — 73-1025-N

DOCKET ENTRIES

1973

October 16—(1) Civil Rights Complaint.

October 16—(2) Order of Court (Northrop, C.J.) granting leave to file in forma pauperis and directing the Clerk to issue a summons thereon and direct the United States Marshal to serve summons and copies of the complaint on the Office of the Attorney General of Maryland and defendant, Dr. Domingo Sorongon, M.D., and directing the Clerk to mail a copy of this Order to the plaintiff.

October 17—(3) Summons issued. (Each served — See Returns of U.S. Marshal).

November 7—(4) Motion of Defendants and Order (Northrop, C.J.) Extending time to Answer or otherwise Plead until and including November 13, 1973. (Copies of Order mailed 11-9-73 ncw).

November 8—(5) Motion of Defendants to Dismiss, and Memorandum in Support thereof. (Copies submitted).

November 8—Status Conference held before Northrop, C.J.

1974

January 23—(6) Petition of Plaintiff for the Issuance of Deposition Subpoenaes at the Expense of the United States and Order (Northrop, C.J.) thereon.

January 24—(7) Appearance of Charles F. Morgan, Esquire as Counsel for the Plaintiff.

January 22—(8) Notice of Plaintiff to take depositions of Dene L. Lusby, James Jordan and Robert J. Lally.

January 31—(9) Motion of Defendants for Protective order, and Order (Watkins, J.) postponing the taking of depositions of Dene L. Lusby, James Jordan and Robert J. Lally to February 8, 1974.

March 11—Status Conference held before Northrop, C.J.

April 3—(10) Opposition of Plaintiff to Defendants' Motion to Dismiss.

April 4—Hearing on Motion of Defendants to Dismiss before Northrop, C.J.

April 4—Argued and held sub-curia.

April 11—(11) Supplemental Memorandum of Defendants in Support of Motion to Dismiss. (Two copies submitted).

May 17—(12) Opinion and Order (Northrop, C.J.) Granting Defendants' Motion to Dismiss. (Copies mailed to counsel 5-20-74 ncw).

May 20—(13) Judgment Dismissing Plaintiffs' Complaint, Order (Clerk) (Dated May 17, 1974) (Copies mailed to counsel 5-20-74 ncw).

May 21—(14) Notice of Appeal of Petitioner. (copies mailed by Clerk — 5-21-74).

May 22—(15) Order (Northrop, C.J.) amending Opinion dated May 17, 1974.

May 23—(16) Motion of Plaintiff and Order (Northrop, C.J.) that Official Court Reporter prepare and furnish the transcript of proceedings, as therein set forth, pursuant to U.S.C., Title 28, Section 753(f). (copy delivered to Official Court Reporter).

May 24—(17) Transcript of Proceedings before the Court (Northrop, C.J.) on April 4, 1974.

May 29—Record on Appeal transmitted to Clerk, United States Court of Appeals, Fourth Circuit, Richmond, Virginia.

1975

May 5—(18) Attested copy of Order of Judgment of the United States Court of Appeals, Fourth Circuit, reversing the Judgment of the District Court and remanding case for further proceedings, as therein set forth, and copy of Opinion.

In the United States District Court
for the District of Maryland

Complaint

Civil Action No. 8X (Civil Rights)

John Washington,
Plaintiff,
v.
Doctor Harold M. Boslow, Director Patuxent Institution, Jessup, Maryland 20794, and Doctor Domingo C. Sorongon, M.D., Patuxent Institution, Jessup, Md. 20794
Defendants.

I.

Jurisdiction

1. This is a civil action authorized by 42 U.S.C., Sec 1983 to redress the deprivation, under color of State law of rights secured by the constitution of the United States. The court has jurisdiction under 28 U.S.C. Sec. 1343. Plaintiffs seek declaratory relief pursuant to 28 U.S.C., Secs. 2201 and 2202.

II.

Plaintiff

2. Plaintiff John Washington is and was at all times mentioned herein, prisoner of the State of Maryland, in custody of the Department of Correction. He is currently confined in Patuxent Institution, Jessup Md. 20794. The plaintiff is eligible for release on parole under Maryland law at the time of the writing of this petition.

III.

Defendants

3. Defendant Harold M. Boslow is the Director of Patuxent Institution. He is legally responsible for the overall operation of said institution.
4. Defendant Domingo C. Sorongon, M.D. is the Medical Doctor at Patuxent Institution, he is legally responsible for all medical treatment in said institution.

IV.

Facts

5. In the middle of August 1972, plaintiff was in the recreation yard at the Patuxent Institution wherein he received an injury to his left side in the area of his rib cage.
6. Plaintiff complain of his injury to Domingo C. Sorongon, M.D. at the time of injury and was told by Domingo C. Sorongon that there was nothing to worry about and everything would be okay.
7. Plaintiff continued to complain about his ailment and the pain he was suffering and he continued to be refused medical help.
8. In October 1972, plaintiff was transfer to the Maryland House of Correction, Jessup, Md — per order of Judge Plummer M. Shearin of Montgomery County Circuit Court.
9. On arrival at said institution plaintiff continued to complain of his ailment and pain and he was placed on protective custody.
10. Plaintiff then sought medical treatment in the Md. House of Correction, and a Doctor Weaverman was brought to the institution to examine plaintiff.
11. X-rays were taken for the first time and it was found that plaintiff indeed had a broken rib (10th rib on left side) and this rib had healed on its own, but not in it's proper place due to neglect of Domingo C. Sorongon and the Patuxent Institution.

12. Plaintiff still has trouble and pain because of the neglect suffered under the hands of Patuxent Institution.
13. Plaintiff was returned to Patuxent Institution in July of 1973 by a ruling from The Court of Appeals on June 14, 1973. *Cash v. Director.*
14. Plaintiff still has great pain and finally Dr. Sorongon had X-Rays taken in August 1973, one year after injury was received and at this time he too noticed where the broken rib had in fact healed but stated their was nothing that he could do now.

V.

Legal Claims

15. Defendants failure to provide medical care needed by plaintiff Washington constituted cruel and unusual punishment (Eighth Amendment of the U.S. Const.) and punishment without due process of law (14th Amendment, U.S. Const.)
16. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

Wherefore, plaintiff respectfully prays that this court enter judgement granting plaintiff:

1. A declaratory judgment that the defendants acts, policies, and practices described herein violate plaintiffs rights under the United States Constitution.
2. Compensatory damages in the amount of $10,000 to plaintiff Washington from all defendants and each of them.
3. Punitive damages of $10,000 to the plaintiff from defendant Boslow and defendant Sorongon.
4. Trial by jury on all issues triable by jury.
5. Plaintiff's cost of this suit.

6. Such other and further relief as this court may deem just, proper and equitable.

August 17, 1973

Respectfully submitted,
JOHN WASHINGTON,
Post Office Box #700,
Jessup, Maryland 20794.

In propria personum

In The United States District Court
for the District of Maryland

Civil Action No. 8X

John Washington, et al.,
Plaintiff,

v.

Doctor Harold M. Boslow, et al.,
Defendants.

Motion for leave to proceed in Forma Pauperis and for appointment of counsel.

Plaintiff moves this court for an order permitting him to file this action in forma pauperis without prepayment of fees and costs or security therefore, and appointing counsel to represent plaintiff as provided in 28 U.S.C. Sec. 1915 (d) and 18 U.S.C. Sec. 3006A (g), because, as their attached affidavits indicate, plaintiff is unable to pay such costs or give security therefore, and he cannot afford to employ an attorney. This motion is based on the complaint, affidivits submitted herrewith.

August 17, 1973

JOHN WASHINGTON,
Post Office Box #700,
Jessup, Maryland 20794.

In propria Personam

In The United States District Court
for the District of Maryland

Civil No. 73-1025-N

John Washington,
v.
Dr. Harold M. Boslow, Director Patuxent Institution,
and Dr. Domingo C. Sorongon, M.D.,
Patuxent Institution.

JUDGMENT

In accordance with the Opinion and Order dated May 17, 1974, filed in the above case, it is

ORDERED AND ADJUDGED:

That the plaintiff's complaint be and the same is hereby DISMISSED.

Dated at Baltimore, Maryland this 17th day of May 1974.

PAUL R. SCHLITZ,
Clerk,

By: EARL L. GRAHAM,
Deputy Clerk.

In The United States District Court
for the District Of Maryland

No. 73-1025-N Civil

John Washington,
v.
Dr. Harold M. Boslow, etc., et al.

Baltimore, Maryland
April 4, 1974

The above-entitled case came on for hearing on Motion of Defendants to dismiss before His Honor, EDWARD S. NORTHROP, Chief Judge, at 9:05 o'clock a.m.

APPEARANCES

For the Plaintiff: Charles Morgan.

For the Defendants: Donald R. Stutman.

(2) PROCEEDINGS

(The Court) Good morning.

(The Clerk) Civil Action 73-1025-N, John Washington versus Dr. Harold M. Boslow, Director, Patuxent Institution; Dr. Domingo C. Sorongon, M.D., Patuxent Institution.

Hearing on the motion of Defendants to dismiss.

Mr. Charles Morgan for the Plaintiff, and Donald R. Stutman for the Defendants.

(The Court) All right, Gentlemen, let's see, you've got some things you want to introduce, haven't you?

(Mr. Morgan) Yes, Your Honor, in opposition to the motion.

Seated at counsel table with me, by the way, Your Honor is—

(The Court) What?

(Mr. Morgan) Seated at counsel table with me, he is not a member of the Bar, and awaits results of the Bar exam.

Yes, Your Honor, in opposition to the motion, we have a number of documents and exhibits, and I think, although I haven't specifically talked to Mr. Stutman about each and every one of them, I think in general we have agreed to them and if he has any objection he can restate them, but I don't think there will be.

(The Court) Mr. Stutman?

(3) (Mr. Stutman) I don't have any objection, if we're talking about the deposition.

(The Court) Okay.

Well, then, will you please introduce them, Mr. Morgan?

(Mr. Morgan) All right, sir.

Our first exhibit, Your Honor, would be from the case of Milton McCray, McCray versus Rutherford, and this is also the case of McCray versus Burrell and McCray versus Smith, Civil Numbers 70-1409, 72-68—

(The Court) Wait a minute, start again, will you?

(Mr. Morgan) I'm sorry.

70-1409.

(The Court) Yes.

(Mr. Morgan) 72-68.

(The Court) Yes.

(Mr. Morgan) 72-69.

(The Court) Right.

(Mr. Morgan) And 72-234.

As Your Honor will recall, there were hearings on this case in June of last year, on June 11, 12, 13 and 14, and in reviewing the transcript of that entire four-day proceeding, it appeared that the entire transcript of June 11, which was the first day of the hearing, dealt with the question of the Grievance Commission, and

the exhibits that (4) were introduced by both Plaintiffs and Defendants that day, in addition to the transcript itself, I have here and we propose to introduce that as Plaintiff's Exhibit 1.

(The Court) All right.

(Mr. Morgan) In opposition to Defendant's motion to dismiss.

(The Clerk) Marked as Plaintiff's Exhibit Number 1.

(Items were marked Plaintiff's Exhibit No. 1.)

(The Court) All right.

(Mr. Morgan) Second, Your Honor, in connection with that same hearing, on June 12 there were two occasions during the course of the day when testimony was given by either McCray or by the Warden of the Penitentiary, and I think by Major Mills from the Penitentiary, concerning the Inmate Grievance Commission, and I Xeroxed copies of the relevant pages of the transcript from June 12, and would also propose to introduce that as Plaintiff's Exhibit 2.

(The Court) Very well.

(Mr. Morgan) Specifically, the pages are Pages 145 through 171, and Pages 278 through Page 291.

(The Court) All right.

(The Clerk) Marked Plaintiff's Exhibit Number 2.

(Items were marked Plaintiff's Exhibit Number 2.)

(5) (Mr. Morgan) The third item, Your Honor, is the deposition taken in this case, Washington versus Boslow, of Dene L. Lusby, on February 28th, 1974.

Mr. Lusby is the Executive Director of the Maryland Inmate Grievance Commission and I was present for the examination of Mr. Lusby and Mr. Stutman was also present for the Defendants.

In the back of this deposition are also a number of exhibits.

(The Court) Very well.

(The Clerk) Marked Plaintiff's Exhibit 3.

Do you also want this filed in the case, Mr. Morgan?

(Mr. Morgan) Yes.

(The Clerk) As a pleading?

(The Court) No.

(The Clerk) Or do you just want it as an exhibit?

(Mr. Morgan) It should be filed as an exhibit, that's right.

(The Clerk) Just as an exhibit, filed in the case?

(Mr. Morgan) Well, it's filed as Plaintiff's evidence in opposition to the Defendant's motion to dismiss.

(The Court) Yes.

(The Clerk) All right.

Plaintiff's Exhibit 3.

(Items were marked Plaintiff's (6) Exhibit Number 3.)

(Mr. Morgan) In connection with that same deposition, Your Honor, there was a question made to Mr. Lusby concerning some of the conditions of confinement at Patuxent Institution, and he said that he would supply us with copies of relevant Grievance Commission orders, he didn't have them that day, and after the deposition I wrote a letter to him on March 19th, to which he responded on March 20th and attached the two Inmate Grievance Commission orders that actually should have been exhibits to the deposition, but just simply weren't available on the day of the deposition.

(The Court) All right.

(Mr. Morgan) And so, as our next exhibit, I would propose to introduce my letter to Mr. Lusby, Mr. Lusby's letter back to me, which explains the circumstances, and also the two exhibits themselves.

(The Court) All right.

(The Clerk) Plaintiff's Exhibit Number 4.

(Items were marked Plaintiff's Exhibit Number 4.)

(Mr. Morgan) The next exhibit, Your Honor, is a deposition taken by — taken on, rather, February 28, 1974, in this case, Washington versus Boslow, of Robert J. Lally, who is the Secretary of the Department of Public Safety and Correctional Services.

(7) As with the deposition of Mr. Lusby, I was present to examine Mr. Lally and Mr. Stutman was present for the Defendants.

(The Court) Let's see, he is known as Secretary of what?

(Mr. Morgan) Secretary of Public Safety and Correctional Services.

(The Court) What? Public Safety, and what?

(Mr. Morgan) The Department of Public Safety and Correctional Services, Your Honor.

(The Court) Yes.

(The Clerk) Plaintiff's Exhibit 5.

(Item was marked Plaintiff's Exhibit No. 5.)

(Mr. Morgan) The next exhibit we would propose to introduce, Your Honor, is a series of papers, and perhaps I should describe them for the record.

First is a letter dated March 21st, 1973, to James Jordan from Robert J. Lally. Attached to that letter was an order of the Inmate Grievance Commission in the case of Curtis Midgett and Ernest Minnick and Ronald Minnick. That order of the Grievance Commission is four pages long and is dated March 7, 1973. Attached to it is a statement signed by Secretary Lally, which reads:

The order of the Inmate Grievance commission is (8) affirmed this 20th day of March, 1973.

Next, in this same group, is April—

(The Court) All right, we'll mark that 6-A, okay?

(Mr. Morgan) That would be fine, Your Honor.

(The Court) All right.

(Mr. Morgan) Six B would be, then, a letter dated April 2nd, 1973, which is a letter to Secretary Lally from James Jordan and is a three-page letter.

Six C is a letter dated April 6, 1973, to James Jordan from Secretary Lally referring to an attached revised order, and the revised order is, itself, attached.

And the final section of Exhibit 6, which I guess would be 6-D, is a letter—

(The Court) Six D?

(Mr. Morgan) Six D.

(The Court) Yes, sir.

(Mr. Morgan) Is a letter of July 16, 1973, from Secretary Lally to Curtis Midgett, referred to before, the prisoner who filed the original complaint.

(The Court) All right.

(The Clerk) Six A, B, C and D.

(Items were marked Plaintiff's Exhibits Numbers 6-A, B, C and D.)

(Mr. Morgan) The Plaintiff's final exhibit, Your Honor, is a document entitled, Affidavit of Josephine K. Gump.

(9) Miss Gump is lawyer who works at the Prisoner Systems Project and at my request she went to the Inmate Grievance Commission offices and reviewed the most recent orders of the Maryland Inmate Grievance Commission which, as Mr. Lusby explained in his deposition, are kept in a central place and kept in chronological order.

The purpose of her inspection of Grievance Commission orders was to discover first, what the average length of time it was between the filing of an order and the final disposition of — the filing of the complaint, rather, and the final disposition of the complaint by the Commission.

Second, to discover on how many occasions inmates have been represented by counsel or by law students or by fellow inmates and in how many cases they represented themselves, and this affidavit by Miss

Gump, and she's available to come and present this into evidence herself, although I don't believe it will be necessary, this affidavit of Miss Gump explains the procedure that she used to develop this information and the information itself and is signed by her and notarized.

(Mr. Stutman) I'm looking it over, Your Honor.

(The Clerk) Plaintiff's 7.

(Item was marked Plaintiff's Exhibit Number 7.)

(Mr. Morgan) I apologize to Mr. Stutman for not being (10) able to have presented this to him before, but it was typed up in final form just yesterday afternoon.

The purpose of having Miss Gump do this affidavit, rather than to have the actual orders of the Grievance Commission entered in evidence, is simply to avoid an enormous amount of paperwork, and her summary here is accurate, to my satisfaction, and is sworn to under oath by her.

(The Court) Insofar as that exhibit is concerned, do you want to keep the record open, Mr. Stutman, in reference to an independent check on that data?

(Mr. Stutman) I'm sorry, Your Honor?

(The Court) I am not in any way, Mr. Morgan—

(Mr. Morgan) I understand, sir.

(The Court) — stating that she would say anything wrong, but maybe he would want to have a run on it himself.

(Mr. Stutman) Well, I really have no objection, subject to, you know, an addition, if it proves not to be accurate, that's all.

(The Court) All right.

Okay, well, how long do you want?

(Mr. Morgan) Your Honor, I might suggest, to a certain extent, this information is public record.

(The Court) Yes.

(Mr. Morgan) And the only reason that it is presented in this form is to make it easier for the Court to be (11) able to review it.

(The Court) I understand.

(Mr. Morgan) And although it is presented in exhibit form here, I think it could be, actually, presented in memorandum form, or in our brief, if Mr. Stutman wanted to do that.

(The Court) Ahuh.

(Mr. Stutman) Well, as I said before, I really have no objection, and unless I find out something to the contrary, that these aren't all the cases, I would have no objection.

(The Court) Well, what I'm saying, of course, take it for what it's worth, but I want to know whether you want an opportunity to answer any of these things, that's all.

(Mr. Stutman) Any of the exhibits?

(The Court) Yes, by brief, or anything else you wish to do.

(Mr. Stutman) Well, the only thing I would like to do is take a closer look at this affidavit, all the other exhibits I've seen.

(The Court) All right, and then give you an opportunity to file a reply brief?

(Mr. Stutman) Yes, if it's necessary.

(The Court) All right.

Now, is that all you have?

(12) (Mr. Morgan) That's all the exhibits we have, yes, Your Honor.

(The Court) All right.

Now, what have you got, Mr. Stutman?

(Mr. Stutman) On our motion to dismiss—

(The Court) Have you got anything you wish to introduce?

(Mr. Stutman) No, sir.

(The Court) What?

(Mr. Stutman) No, sir.

(The Court) All right.

Do you want to be heard on the motion to dismiss?

(Mr. Stutman) Yes, sir.

(The Court) You both have filed briefs, right?

Have you had a chance to go over Mr. Morgan's—

(Mr. Morgan) Yes, Your Honor, we filed them.

(The Court) —opposition to your motion?

(Mr. Stutman) I didn't get it, Your Honor.

(The Court) You didn't, what?

(Mr. Morgan) It was hand delivered to Mr. Stutman's office yesterday.

(Mr. Stutman) And I wasn't in yesterday afternoon and I haven't been in the office yet this morning, so I haven't had a chance to look at it.

(The Court) So, the best thing to do is give you an (13) opportunity to reply to it?

(Mr. Stutman) I think I better have some time, yes, sir.

(The Court) Okay, I'll give you — what do you want?

I'll give you 15 days, is that enough?

(Mr. Stutman) Fine.

(The Court) All right.

Now, do you want to argue this morning on your motion to dismiss, and Mr. Morgan can argue in opposition to it, briefly, and then we can — I'll hold the matter open to give you an opportunity to reply to that brief, and in 15 days, okay?

(Mr. Stutman) Yes, sir.

(The Court) All right.

Is that all right with you, Mr. Morgan?

(Mr. Morgan) The only comment I would have about that, Your Honor, is with regard to the length of time.

As Mr. Stutman knows, Mr. McCray's case is on appeal, and as Your Honor knows, also.

(The Court) Yes.

(Mr. Morgan) We were advised that the brief for the appellant is due in that case on April 29.

(The Court) Well, do you want—

(Mr. Morgan) As I understand it, although I don't (14) know for sure, I think the case is going to be scheduled for argument the first week in June and it could possibly be scheduled for argument en banc the first week in June, and I think that it would be to the benefit of both parties were this case to be able to — the Washington case were to be able to be on appeal in time so that this information could be included in the appendix to my brief on April 29th, and also so that this evidentiary material could be referred to by both parties in their briefs, as well as oral argument.

I had previously written a letter to the Fourth Circuit asking for an extension of time on the brief in McCray, noting the fact that the Washington case was developing in the District Court and would be coming to the Fourth Circuit either on appeal of the Plaintiffs or Defendants in the near future, and I don't think that there would be any problem, at least I don't foresee any problem at this point, consolidating the two on appeal.

The only possible problem may be that the Washington case may not get to the Fourth Circuit on time.

(The Court) Well, we'll do the best we can, that's all I can say, Mr. Morgan.

Of course, you can allude to the new arguments down there, I imagine, but if we give him — how long do you need to answer this?

(Mr. Stutman) I would hope to be able to have an (15) answer drafted by the middle of next week.

(The Court) All right, then let's do that.

(Mr. Morgan) That would be fine.

(The Court) And we'll see what we can do, that's all I can tell you because I'm backed up something terrible.

(Mr. Stutman) As a practical basis — well, all right.

(The Court) Okay.

All right.

(Mr. Stutman) Just briefly, if the Court please, this case, I think, is a clear example of what the Court meant when it said that exhaustion would be required before the Grievance Commission in the McCray versus Burrell case, is a very clear example.

We have an individual who was transferred to Patuxent Institution and in his pleading alleges that he was injured in the exercise yard, I think it was, playing softball. The doctor didn't really do anything for him and he was transferred back to the Maryland House of Correction.

He says that he discovered that he had broken ribs, which he says occurred at the time of the incident at Patuxent Institution, and made his claim for denial of proper medical treatment.

Without going into the facts of the case, I think it's clear from the testimony before this Court in McCray, and (16) the Court's own opinion in McCray, that this is a matter, at least initially, to develop a factual record which could be resolved by the Inmate Grievance Commission.

I think Mr. Lusby's deposition contains references to facts that the Inmate Grievance Commission can and does on occasion take immediate action to correct violations of prisoner's civil rights, including allegations of denial of proper medical treatment, and see that the individual, even if he does have a damage action, still gets his treatment as soon as possible, and in this particular case had Mr. Washington, and I think the record before the Court again will back this up, if Mr. Washington had complained to the Grievance Commission and the Grievance Commission's investigation found out there had been denial of medical treatment, there's no question in my mind that the situation would have been rectified immediately.

And subsequent to that, after the rectification, the individual would also have had a chance to present at a hearing any allegations regarding this medical treatment, a record should have been developed, and the record could have come to this Court, if the claimant was still dissatisfied, and given the Court a basis on which to either open the case up for further information or decide it on the information before it from the Grievance Commission's record.

And, again, as I said, I'm going to be brief, this is the perfect example of an individual who makes a complaint (17) within the system that he has been denied his civil rights, an example of a situation where the Grievance Commission can be effective, as proven, I think, in Mr. Lusby's deposition and in the prior testimony before this Court, where fast relief can be obtained, a proper record prepared, and if there is, in fact, a violation of civil rights then when it finally gets to this Court on a proper record, the Court would be able to dispose of it in a similar fashion, habeas corpus, where there has been development of a state record in a state court before a state agency.

And on the very practical basis, I think, again, it points up to the propriety of this Court's prior opinion in McCray and that in very few cases would the Court be able to act as fast as the Grievence Commission, because it has the ability to facilitate treatment and rectification of problems with a phone call, whereas the petition for proper medical — containing allegations of denial of medical treatment filed in this court would have to go through a long process, if it was a question of injunctive relief or getting the man immediate medical treatment it would, of necessity, require appointment of counsel and filing the proper motion, and petitions for injunctions.

It all boils down to the fact that the cases which require exhaustion, talk about exhaustion, only require exhaustion, an effective remedy. We think the remedy is (18) effective, we think it's workable, we think it has worked and will continue to work; and we see no reason why this Court should not follow its prior opinion in

McCray and dismiss this petition and require Mr. Washington to present these grievances to the Inmate Grievance Commission.

That's all I have.

(Mr. Morgan) Your Honor, in view of the Court's previous opinion in McCray versus Burrell and Smith, Plaintiff here concedes that he has an uphill battle convincing the Court exhaustion of his state administrative remedy should not be required in this case.

However, I have submitted on behalf of the Plaintiff a memorandum in opposition to the Defendant's motion to dismiss, and, of course, the Court, although it's not in this case, has the benefit of the thoughts of both Mr. Stutman and Mr. Rosenthal and I had in our memorandum in the McCray case itself, and I don't think that our position — I think that our position, Plaintiff's position, is adequately reflected in the papers we have filed to date.

I would just say that I believe the case, this case, can be distinguishable — can be distinguished from the McCray case on the following grounds.

First, the McCray case was a typical case of a prisoner complaining about the conditions of his confinement and although he was asking for damages, as the Court noted in (19) its opinion in McCray versus Burrell, the nature of his complaints went directly to discretionary actions of the prison administrators acting in their official capacity, specifically, their discretionary action in placing him into isolation on one occasion, and into what was called hospital isolation on another occasion, and, also, the addendum alleged denials of procedural due process.

By comparison, the Washington case, although it involves a Defendant who is an employee of Patuxent Institution, is much more in the category of a traditional tort action, of course, the Supreme Court recognized in Monroe versus Pape that actions under 1983 are essentially in many ways tort actions, and this particular case presents those kinds of facts.

Mr. Washington is asking for compensation for injuries that he alleged that he suffered as a result of the grossly negligent, at least, and perhaps intentional, behavior of Dr. Sorongon and other people at Patuxent Institution in the treatment of this medical problem that he had.

We would submit that the Inmate Grievance Commission is a particularly inappropriate body to decide this case because what's at issue, really, is not anything that invokes their expertise, and their expertise being in the area of prison administration affairs.

(20) The proof in the case is the proof that is typical of a tort case and the kind of things that the courts deal with traditionally all the time and not the kind of thing that administration agencies, and particularly the Inmate Grievance Commission, is equipped to deal with.

In addition to that, I would think that Washington proceeding pro se and no right to appointed counsel before the Inmate Grievance Commission would have a difficult time proving his case inasmuch as there is no provision for prehearing discovery, there's no — there's the possibility of the Inmate Grievance Commission restricting his rights to call witnesses, or to cross-examine witnesses, there's difficulty of proof with regard to documents inasmuch as he is a prisoner and perhaps doesn't have access to documents at University Hospital, if he went there, or at the House of Correction, where he also received some medical attention.

He has difficulties in discovery, no discovery, in fact. He has difficulties of investigating the case, and difficulties at the hearing itself in presenting the case.

Finally, and, I suppose, most important in this case is that the only relief Mr. Washington is asking is compensation in the form of compensatory and punitive damages for the injuries that he suffered and for the deprivation of the constitutional rights that he suffered, and, as the Court is well aware and as Mr. Stutman would concede, (21) the Inmate Grievance Commission is powerless to award damages, even were they to find his case wholly meritorious.

So, we would say that under these circumstances, first, that the exhaustion of administrative remedies under the holdings of the Supreme Court cannot be required, recognizing, however, the prior opinion of this Court in the McCray case.

If exhaustion may be required in certain cases, we would say that this is a particularly inappropriate case for exhaustion to be required for the reasons that I've stated this morning.

(The Court) Now, let me ask you something.

Sit down, you can be seated.

There has been a trend, and I don't know how many courts are involved, but, for example, in a case like this, where the accusation is against the doctor, right, to, in some District Court, direct the Attorney General of the state to take evidence, have a hearing, take evidence.

That doesn't mean that an attorney is assigned to the complaint, but evidence is taken and the testimony of the doctor is taken and, of course, of the complaining prisoner, and on that record the District Court makes its decision as to whether or not there has been an actionable case against him.

Now, the other thing is, of course, that in courts (22) like this court, heretofore what have we done?

What we've done is file a show cause order on the Attorney General and affidavits are submitted by the doctor, by the personnel who are accused, and anyone else that happens to have anything to do with the case, and in most instances it takes an inordinate amount of time to get those things, and that is understandable for the reason that the prisons are overloaded and the staff is overworked and the physicians are attending to other matters, and, also, of course, the pressure of the ongoing case load of the court.

I notice that in your opposition, you have indicated the number of so-called civil rights cases that have been filed here in the past number of years, the open cases and the number closed, but there is still a time element in the closing of these cases, and in the time that it

takes to develop this investigative technique which I alluded to at the very commencement of my remarks, as used by some other court.

Now, referring again to that type of action where a District Court of the United States directs the Attorney General to, in effect, hold the greivance hearing and develop a record, it seems to me that it has exacerbated the friction between the administrative authorities and the prisons themselves, and, furthermore, it has caused the federal intrusion (23) into what is most distinctly a state matter, and it also, of course, takes the time of these people who are not really a hearing body, so to speak, to effect an opposition, whereas here in Maryland we do have this Grievance Commission which hears these matters, and yet that type of attempt to get at the basis of the complaint is utilized in one instance, and, again, the type that I referred to that's utilized in this court to attempt to resolve this matter on affidavits is utilized, and, thirdly, of course, we have the situation where it would be incumbent upon this Court to hold a hearing, such as we have done in the McCray case, and such as we have done in other cases, and it has been indicated that a Jury trial can be had in these instances.

Now, the thing about this that bothers this Court, and bothers a number of Courts, and, indeed, bothers most people, is that this type of relief is something that is more or less the pursuit of the needle in the haystack, and, indeed, both the habeas corpus actions and the new civil rights cases have brought about that kind of function to a federal court in the rise of the recognition of the so-called constitutional rights of prisoners and their rights to be free of the various types of things, which it, really, has brought this matter about, and brought it to the attention of the public, and others.

It's difficult to say, under the heavy pressures (24) that the Courts work under today, that they used to go into these problems and to look for that needle in the haystack. There are those who say that no matter how infinitesimal injustice is, it must be rooted out and destroyed.

I think they lose sight of the fact that whereas we attempt to do justice, we are, in essence, a court of law and we have to give priority to certain things.

We are forced to give priorities because of both the decisions of the Supreme Court and the matters that are foisted on this Court that are really legislative matters by the Congress of the United States with the result that it seems to the Court that the United States District Courts and the United States Circuit Courts of Appeal, and, more particularly, the Supreme Court of the United States, should attempt to make a workable solution to these problems in a world that, of course, is not perfect, and such a solution, I think, has been the thing that everyone seeks, it has occasioned a number of articles. Of course, in seeking a solution, we move into what you might call an area of compromise where we compromise the federalism itself, and what the states are required to do, and what the Courts of the United States are required to do in reference to the duty of those courts to see that the constitutional rights of the individual are not impinged upon by the state.

In seeking a solution, it seems to me that the (25) Grievance Commission answers the problems that we face in connection with making a determination of what grievance and what complaint these people have under the civil rights action, and that it forms a better forum to do that in than the methods that we are utilizing at the present moment.

Manifestly, if, for example, we undertook to hear and act as a Grievance Commission, in and of itself, or act as a court of law, as you point out this is a tort case and ought to be in this area, we are under the gun of people who would do nothing, and have the time to do it, to come into these courts continually.

There is no constitutional guarantee, for example, that a person in a civil suit is entitled to a lawyer, yet, and I don't know whether that time will ever come. It seems to me it shouldn't come.

You have the correlary question arising in this type of case, for example, what right does a prisoner have to

bring a tort action against another individual that arose prior to his incarceration?

Now, we have got some of those being filed in this court.

Does that mean that people in Atlanta, for example, who file a tort action against an individual in the State of Maryland which arose prior to his incarceration must be brought here at Government expense and to prosecute his case (26) in this court during the period of his incarceration?

Most every prisoner could think of some action that he could bring of some kind.

We have been forced to accept these and to file, but, as yet, we have not brought these people over.

I would refer you to the case of the so-called jumping bandit — what's the name of that case — Urbano, it was a libel suit against a magazine, he filed one here, he filed one in New York, and it was one that took a great deal of trouble and time, and so forth, and effort, and Urbano wished to come here and testify.

It's something that maybe Mr. Morgan and you, Mr. Stutman, might look up, there's an extremely interesting dissertation of the type that I alluded to where a person can cause a Court a great amount of work, and so forth, under the circumstances, which would appear unwarranted, really.

New York has a statute where a person loses his civil rights, and, also, I think that if a person is imprisoned in reference to that type of case to which I am now referring, the statutes toll, and when he comes out he can file suit again.

What I'm pointing to is this, if the latter method were pursued, and that is that anyone, any matter whatsoever, could come into this court from prison and litigate, that's all we would be doing, despite the fact that the records indicate that perhaps the cases, civil rights cases, are not (27) excessive, according to your viewpoint. They are excessive, however, Mr. Morgan, in reference to those who have to make the decision and

the weight is felt, they're a burden to all of us, and I notice that in '72, 89 cases were opened, and in '73, 97 were opened.

What I'm saying, in essence, is this, it seems to me that some screening must be had before these matters come to this Court, and that is what I said in McCray, and if the record, for example, before the Grievance Commission develops that there is an action which would warrant monetary damage, then I think that the Court would certainly take whatever steps are necessary to alleviate that condition and have the proper hearing that would be indicated under those circumstances.

Now, I point one other thing out, I'm not including this and I'm not giving any opinion, I'm merely stating this.

Another thing that has occurred particularly in reference to these suits against medical doctors by prisoners, it's very rare, it's a matter of malpractice, really, when you get right down to it, and the suits, unquestionably, have increased the cost of medical malpractice insurance. They have caused a reaction among the medical profession in reference to performing a public duty, which it certainly is, to treat these men, and it's something that would appear to me to be certainly taken into consideration when you force (28) the Court to deal, over the board, so to speak, with weighing the various rights of individuals and attempting to see that justice is done in an imperfect world.

This is giving us all some concern, this activity, and the reluctance of medical people to take on the duty of treating prisoners, under the circumstances, because no matter what they do they're going to get a complaint about it, and, in most instances, the claims, and you can look through the decisions of not only myself, but the Judges of this court, in 95 to 99 per cent of the long time we give to developing the issues, and so forth, and the affidavits of these medical men, and the rest, almost comes out — at least, in most cases, comes out that there is just absolutely nothing to it.

And I return again to the fact that in this day when we must have to work on a priority condition and make decisions of that kind that it seems to me that — and have to select priorities, it's up to the federal courts now to make a determination as to what we should do concerning this very difficult area that we have to work in.

And I will receive your brief, Mr. Stutman.

(Mr. Stutman) Yes, Your Honor.

(The Court) The middle of next week in reply to the Plaintiff's opposition to the motion and will attempt to get an opinion out as quickly as possible.

(29) All right.

Have you — I don't think there's anything else you need, you've had plenty of time with the record as it is, right?

(Mr. Morgan) I think so, Your Honor.

(The Court) All right, thank you, Gentlemen.

(Mr. Stutman) Thank you, Your Honor.

(Mr. Morgan) Thank you.

(Whereupon, hearing concluded at 9:55 o'clock a.m.)

* * * * * *

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

March 21, 1973

Mr. James Jordan
Commissioner
Division of Correction
929 Greenmount Avenue
Baltimore, Maryland 21202

Dear Jim:

Enclosed is a copy of the Order resulting from the Inmate Grievance Commission's hearing of the complaint of Curtis Midgett, Ernest W. Minnick, and Donald Minnick. They will be sent a copy of the Order in three days.

Please let me know within thirty days in writing what specific action has been taken to comply with this Order.

Sincerely yours,

Secretary

RJL:Mcs
Enclosure

cc: Inmate Grievance Commission

STATE OF MARYLAND
INMATE GRIEVANCE COMMISSION

ORDER

In the matter of: Curtis Midgett, #57320 and IGC #1295 Ernest W. Minnick, #116732 and Ronald Minnick, #116733 and IGC #1282 Maryland Penitentiary

This matter was initiated by multiple letters of complaint addressed to the Inmate Grievance Commission by the three complainants, Curtis Midgett, Ronald Minnick and Ernest Minnick, who jointly allege that the conditions on the protective custody tier of the Maryland Penitentiary are in violation of the Inmate Rule Hankbook, that they are subjected to inhumane treatment and are the victims of racial prejudice (blacks v. whites). They request that they be granted the same privileges as inmates in the prison's general population.

The complainants appeared before the Inmate Grievance Commission at a hearing held on August 16, 1972 at the Maryland Penitentiary with Commissioners Levitt, Fulton and Bennett participaring in a unanimous decision. Ms. Josie Gump and Mr. Skip Mancuso of the Legal Aid Bureau represented the complainants. Major James Mills, Shift Commander, represented the Maryland Penitentiary.

Because these are comparison cases, heard simultaneously, a single order will issue and relate to all three complainants.

Findings of Fact

The complainants, through their legal representatives, alleged that the following conditions existed and continue to exist on the protective custody tier of the South Wing at the Maryland Penitentiary.

1. While on protective custody they are given only two showers in three weeks. Inmates in general population are given showers once a day. As relief they requested the same shower privileges i.e., daily and to be allowed to shower alone, separately from other inmates on the South Wing who are there for other than protective custody reasons.

2. The complainants claim that their visiting privileges are limited and would like to have their visits in the general visiting room of the prison, in contrast to the limited space and generally inadequate visiting room used by any inmate on the South Wing permitted visitors.

3. The complainants claim they are not allowed to exercise as required, thirty minutes a day. They claim that if they were in general population they would be getting two hours a day; but the thirty minutes of daily exercise on protective custody is not adhered to and they get their exercise at the discretion and whim of the guards.

4. The complainants would like to work while on protective custody for which they could get paid and earn industrial credits. Presently they work as volunteers and receive no money or credits. They claim they could be tier runners on the South Wing, as they would be in no danger from other inmates because those on the South Wing for disciplinary reasons are confined to their cells.

5. The complainants assert that they should not be handcuffed when they move about the institution. They state they are not on protective custody for punishment

and they urge that they should not be treated as disciplinary residents of the South Wing.

6. The complainants allege that they are not given adequate medical treatment, and that they would like to be seen by a doctor on a regular basis.

Major James Mills presented the institution's view of each issue as follows:

1. Major Mills claims that he does not have the manpower to allow the men on protective custody more than two showers a week. Consideration will be given, subject to manpower limitations, to allow protective custody inmates to shower separately.

2. Major Mills stated protective custody inmates will be allowed four visits and in the general visiting room. However, he will need an additional officer to stay with the inmate for purpose of protection and this requirement may pose a manpower problem sufficient to make it necessary to revert to use of the visiting area adjacent to the South Wing.

3. At the time of the hearing protective custody inmates were not being exercised because of the lack of manpower and as an aftermath of the July, 1972 riot. He cannot exercise all the protective custody inmates at once because all the cells would be open and security would not be maintained. However, Major Mills assured the Commission that as the situation improved, present restrictions would probably be relaxed and this would favorably affect the exercise program on the South Wing, particularly for protective custody inmates.

4. Major Mills stated that protective custody inmates do work as volunteers on the protective custody tier, but that they are not permitted on the South Wing disciplinary tiers because there are other inmates there, employed as tier runners, who could harm them.

5. Major Mills claims that the inmates are handcuffed for custody and control as well as for their own protection when moving about the institution.

6. Major Mills stated that he would see to it that the protective custody inmates received regular medical

treatment and that the South Wing medical officer would check them on a regular basis.

Conclusions

The Inmate Grievance Commission finds the grievances alleged by the Minnicks and Midgett to be meritorious in part and that certain situations and conditions do exist in the protective custody area of the South Wing that can be improved or corrected. Major Mills explained the difficult situation attendant upon the riot and its aftermath. He gave adequate justification for delays in meeting desirable goals of improvement and likewise indicated that progressive efforts were being made to attain such goals.

As to the complaints of racial prejudice by these three complainants, evidence presented by Ernest Minnick and Curtis Midgett was countered adequately by the institution's representative and this element of the complainant's stated grievance is held to be wholly without merit.

Disposition

The Inmate Grievance Commission takes note of the fact that Major Mills has initiated measures to correct the grievances stated by the complainants. However, the Inmate Grievance Commission would make the following specific recommendations and comments as to each of the stated grievances:

1. That protective custody inmates be given two showers a week and that the manpower necessary for such action be secured from among the custodial personnel. The Inmate Grievance Commission recommends that showers for protective custody inmates be given in the evening when the South Wing is relatively quiet and no disciplinary inmates are on the tiers, the "flats" or in the shower room.

2. That reasonable efforts be made to permit the protective inmates to receive visitors in the general visiting area, consistent with the need of protection that attends inmates in protective custody status.

3. That protective custody inmates should be given exercise daily within the purview of the Inmate

Handbook which states that "a reasonable amount of exercise is necessary for the health and well-being of every person".

4. That the institution consider giving protective custody inmates work assignments on the disciplinary South Wing tiers, replacing other inmates from general population.

5. The discretion of the custodial force at the Penitentiary should not be disturbed in respect of their judgment relating to "security" of protective custody inmates while moving about the institution.

6. The institution has already instituted measures to meet the expectations of adequate medical care for South Wing inmates, including regular visits to that area by staff physicians.

The claim of racial discrimination is without merit and is hereby ordered dismissed.

This 7th day of March, 1973.

E. A. FULTON,
Commissioner,
JEFFREY LEVITT,
Commissioner,
JAMES V. BENNETT,
Commissioner.

Re: Curtis Midgett #57320 IGC No. 1295
Ernest W. Minnick #116732 IGC No. 1232
Ronald Minnick #116733 IGC No. 1282

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

The Order of the Inmate Grievance Commission is affirmed.

This 20th day of March 1973.

ROBERT J. LALLY,
Secretary.

April 2, 1973

Secretary Robert J. Lally
Department of Public Safety and
Correctional Services
Suite 500 Executive Plaza One
Hunt Valley, Maryland 21031

Re: Curtis Midgett, #57320, IGC No. 1295
Ernest Minnick, #116732,
Ronald Minnick, #116733, IGC No. 1282

Dear Secretary Lally:

I have reviewed the Order of the Inmate Grievance Commission in the above case.

At the outset, I must again voice objection to the action of the Inmate Grievance Commission in including their general recommendations and comments in the specific inmate grievances which are sent to the inmate. Although the Commission states that these are "recommendations" and "comments", the inmate is left with the distinct impression that the institution is to take remedial action regardless of the lack of resources, etc. As an example, in the instant case, the Commission has made three recommendations which are fundamental to institutional management but which can be implemented only to the degree that money and manpower are available. We are presently operating in a deficit situation and with a shortage of personnel. Recently, the Penitentiary has been averaging 13 vacancies per month. With the City Jail's starting salary of $8,200 for Correctional Officers, and the Penitentiary's at $7,100, we can expect this average to increase.

With respect to the individual items:

1. At the present time, each inmate is allowed one shower weekly, at a time that is most feasible, i.e. during the day or in the evening, under secure conditions.
2. I have discussed this matter with Warden McClellan and he takes exception to the statement made by Major Mills in the "Findings of Fact" that the suggestion of the Inmate Grievance Commission can be carried out. If a man is in protective custody and needs the protection that that implies, the only way to afford him such protection is to have him visit in an area which can be watched closely. The segregation area is the only other area not used by inmates in the general population.
3. Inmates are exercised on a daily basis. The number exercised at any one time is determined by available staff.
4. On a limited basis, selected inmates are allowed out to help with various tasks, but this depends on their conduct, their reason for being on protective custody and the work to be performed. For the most part, the inmates on protective custody receive the basic creature comforts but the institution does not wish to encourage their stay on protective custody.
5. If by this statement the Commission is reinforcing the Officers need to use discretion in the handling and movement of the inmates, I would agree. Inmates in protective custody cannot be allowed to roam freely without protection.
6. It is my understanding that this matter has been resolved. As indicated, inmates on protective custody will receive regular medical treatment and will be checked on a regular basis.

The greater percentage of inmates are on protective custody as a result of their own machinations, i.e. gambling debts, love triangles, etc. They are free to come off protective custody whenever they choose to if they will sign a bodily injury waiver.

I respectfully request that you have the Disposition rewritten and that the suggestions, recommendations and comments of the Inmate Grievance Commission be appended to the Order and that it not be forwarded to the inmate. I feel that when the Division is doing everything possible within its present fiscal capabilities

to alleviate certain less than desirable conditions, a document such as the type covered in this letter can help to incite serious possible disturbances.

I might add, that in the light of Thursday's disturbance, the suggestions of the Commission may be further from implementation than ever.

Sincerely yours,

JAMES JORDAN,
Commissioner.

JJ:jms2

April 6, 1973

Mr. James Jordan
Commissioner
Division of Correction
920 Greenmount Avenue
Baltimore, Maryland 21202

Dear Jim:

Enclosed is a copy of the revised Order in connection with the Inmate Grievance Commission's hearing of the complaint of Curtis Midgett, Ernest Minnick, and Ronald Minnick.

Sincerely yours,

Secretary

RJL:mel
Enclosure
cc: Inmate Grievance Commission

Re: Curtis Midgett #57320	IGC No. 1295
Ernest W. Minnick #116732	IGC No. 1282
Ronald Minnick #116733	IGC No. 1282

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

The Order of the Inmate Grievance Commission is modified as reflected hereinafter.

The complaining inmates in this case are all on protective custody. It is within the inmates' discretion to be transferred to the general population where they could enjoy the privileges not available to them while on protective custody. While the record in this case is silent as to the reason for these three inmates being on protective custody, it is assumed that they are in this status by their own volition.

There is a positive duty on the part of the Division of Correction to protect the personal security of inmates in their custody. This is especially applicable where the threat to safety is of constitutional proportion. There exists in any correctional institution a myriad of reasons for threats to physical security of an inmate, such as personal vendettas or racial, sexual or political motivations. For these reasons, there is provided in the Penitentiary an area where such inmates, hopefully, will be secure from such threats or attacks. Since the stay of an inmate in protective custody is usually of short duration, the Division of Correction currently does not provide all of the benefits there that are available in the general population. The Capital Improvement Plans of the Division of Correction, which the current session of the General Assembly are now considering, will ultimately correct the physical limitations that now exist. In the interim, the Division of Correction is meeting its fundamental duty to provide protective security facilities to those inmates who request it.

Thus in this case, the remedy for any deprivation of benefits, such as showers, work assignments, exercise, etc. lies within the discretion of inmates, who choose to undergo the diminuition of these benefits in order to enjoy the more complete safety afforded by protective custody.

Until the physical construction of new facilities is finally completed, the Division of Correction is ordered to continue every reasonable effort to improve the physical conditions for all inmates confined to the Penitentiary.

This 20th day of March 1973

ROBERT J. LALLY,
Secretary.

July 16, 1973

Mr. Curtis Midgett #57320
Maryland Penitentiary
954 Forrest Street
Baltimore, Maryland 21202

Dear Mr. Midgett:

I wish to reply to your letter of July 3. The Order of the Inmate Grievance Commission signed by me on March 20, 1973 apparently has been misinterpreted by you.

The effect of that Order was that since you are on protective custody, you may leave this status simply by advising the authorities and signing a waiver to that effect. The decision to remain on protective custody is yours; and if you wish to enjoy the privileges of the general population, you can readily remove yourself from protective custody status.

Sincerely yours,

ROBERT J. LALLY,
Secretary.

RJL:mel

cc: Commissioner Jordan
Inmate Grievance Commission

In The United States District Court
for the District of Maryland

Civil No. 73-1025-N

John Washington,
Plaintiff,
v.
Dr. Harold M. Boslow, et al.,
Defendants.

AFFIDAVIT OF JOSEPHINE K. GUMP

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 3rd day of April, 1974, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Josephine K. Gump, and made oath, in due form of law, as follows:

I JOSEPHINE K. GUMP, do solemnly swear under the penalties of perjury that the matters and facts set forth in the following statement are true and correct to the best of my knowledge, information, and belief.

1. I am a member of the Bar of the State of Maryland and the United States District Court for the District of Maryland. I am a lawyer with the Prisoner Assistance Project of the Baltimore Legal Aid Bureau, Inc.

2. On February 28, 1974, I visited the office of the Maryland Inmate Grievance Commission, Room 402, Executive Plaza One, Hunt Valley, Maryland, and inspected the written decisions of the Commission. They are maintained in four looseleaf binders and filed in the order in which they are issued. Each decision contains an introductory paragraph which states the general nature of the inmate's complaint, the date on which the case was initiated, the date of the hearing

before the Commission, and whether the inmate was represented at the hearing. Each decision also contains Findings of Fact, Conclusions, Disposition and the date of the decision. Any decision favorable to an inmate is reviewed by the Secretary of the Department of Public Safety and Correctional Services, and his signed and dated final disposition of any such cases is attached to the Commission's decision.

3. I inspected each written decision of the Inmate Grievance Commission entered between November 19, 1973, and February 20, 1974, which was the date of the most recent decision at that time. The following is a complete and accurate statement of my findings:

(Notes:

a. The "Date of Complaint" is described by the Commission in its decisions as the date on which the complaint was received (R) or the date appearing on the face of the letter of complaint itself (D);

b. The "Disposition" of the complaint by the Commission is noted below as "Meritorious" (M), "Partially Meritorious" (PM), "Not Meritorious" (NM) or "Dismissed as Moot" (DM);

c. The "Disposition by the Secretary" of cases found by the Commission to be meritorious or partially meritorious has been to "Affirm" (A), "Reverse" (R) or "Modify" (M);

d. "Week of Final Decision" is the week in which a final decision was made in each case; for example, in I.G.C. No. 1980, the complaint was received by the Commission on June 29, 1973, and a final decision was entered on February 20, 1974. The final decision was made in the 34th week after the complaint was initiated.)

I.G.C. No.	*Date of Complaint*	*Date of Hearing*	*Date of I.G.C. Decision*	*I.G.C. Disposition*	*Secretary's Disposition*	*Date of Secretary's Disposition*	*Week of Final Decision*
1980	(R) 6/29/73	9/26/73	2/20/74	NM			34th
2198	(D) 10/17/73	1/4/74	2/20/74	NM			19th
2270	(D) 11/25/73	1/25/74	2/20/74	NM			14th
2275	(R) 12/3/73	1/25/74	2/20/74	NM			12th
2106	(D) 8/31/73	1/16/74	2/20/74	DM			25th
2121	(D) 9/5/73	1/16/74	2/20/74	DM			25th
2225	(D) 10/30/73	1/18/74	2/20/74	NM			17th
2303	(R) 12/18/73	1/30/74	2/20/74	NM			10th
1742	(R) 2/7/73	4/24/73	2/20/74	NM			55th
2151	(D) 9/22/73	12/5/73	2/20/74	NM			22nd
2150	(R) 9/25/73	12/5/73	2/20/74	NM			22nd

I.G.C. No.	*Date of Complaint*	*Date of Hearing*	*Date of I.G.C. Decision*	*Date of Secretary's Disposition*	*I.G.C. Disposition*	*Secretary's Disposition*	*Week of Final Decision*
2217	(D) 10/26/73	1/4/74	2/20/74		NM		17th
1969	(D) 6/15/73	10/12/73	2/20/74		NM		36th
2220	(D) 10/27/73	1/8/74	2/20/74		NM		17th
2083	(D) 8/13/73	12/12/73	2/20/74		NM		28th
2320	(R) 1/3/74	1/30/74	2/20/74		NM		7th
1662	?	3/7/73	3/16/73		NM		N.A.
2260	(D) 11/21/73	1/18/74	2/15/74	2/20/74	M	A	14th
1905	(D) 5/15/73	8/8/73	2/15/74	2/20/74	M	M	41st
1998	(D) 6/27/73	9/26/73	2/15/74		NM		34th
2180	(D) 10/8/73	12/7/73	2/15/74		NM		19th
2179	(R) 10/12/73	12/7/73	2/15/74		NM		19th
2153	(D) 9/23/73	1/4/74	2/15/74		NM		21st
2158	(R) 9/28/73	12/14/73	2/15/74		NM		21st
2125	(D) 9/12/73	11/30/73	2/15/74		NM		23rd
2052	(R) 8/3/73	12/12/73	2/15/74		NM		29th
1962	(D) 6/19/73	10/10/73	2/15/74		NM		35th
1867	(D) 4/25/73	10/19/73	2/15/74		NM		43rd
2010	(D) 7/16/73	10/12/73	2/15/74		NM		31st
1711	(R) 1/17/73	4/25/73	1/22/74		NM		54th
1556	(R) 10/13/72	6/5/73	1/22/74		NM		67th
2066	(D) 8/7/73	12/12/73	1/22/74		NM		25th
1868	(D) 4/27/73	10/26/73	1/22/74		NM		39th
2130	(D) 9/6/73 (R) 9/18/73	12/14/73	1/22/74		NM		20th
1180	?	?	9/12/72		M		
			1/22/74	1/22/74	M	A	N.A.
2131	(R) 9/19/73	11/30/73	1/22/74	1/22/74	PM	A	18th
2145	(D) 9/20/73	11/14/73	1/14/74	1/24/74	PM		19th
1953&	?	9/11/73&	1/14/74	1/24/74	PM	M	N.A.
1941	?	11/23/73					
2185&	(D) 10/14/73	12/7/73	1/14/74	1/24/74	M	A	15th
2188	(D) 10/15/73						

I.G.C. No.	*Date of Complaint*	*Date of Hearing*	*Date of I.G.C. Decision*	*Date of Secretary's Disposition*	*I.G.C. Disposition*	*Secretary's Disposition*	*Week of Final Decision*
2075	(D) 8/5/73 (R) 8/9/73	10/26/73	1/14/74		NM		24th
1885	(D) 4/5/73	8/3/73 8/8/73	1/14/74		NM		41st
1992	?	10/24/74	1/8/74	1/21/74	PM	A	N.A.
2172	(D) 10/5/73	12/14/73	1/8/74		DM		14th
2122	(D) 10/24/73 (R) 10/30/73	12/14/73	1/8/74		NM		11th
2216	(D) 10/21/73	12/14/73	1/8/74		NM		12th
2093	(R) 8/24/73	12/12/73	1/8/74		NM		20th
2064	(D) 8/1/73	10/30/73	1/8/74		NM		23rd
2140	(D) 9/16/73	10/30/73	1/8/74		NM		17th
2135	(R) 9/19/73	11/28/73	12/21/73	1/4/74	PM	A	16th
2024	(D) 7/17/73	10/11/73	12/21/73	1/4/74	M	A	25th
1952	(D) 6/15/73	11/28/73	12/21/73	1/4/74	M	A	30th
1767& 1494	(R) 9/6/72	5/24/73	12/21/73		NM		16th
1964	(D) 6/21/73	10/3/73 11/21/73	12/21/73		NM		22nd
1886	(D) 5/11/73	10/3/73	12/21/73		NM		33rd
1850	(R) 4/18/73	9/19/73	12/21/73		DM		36th
1945	(D) 6/15/73	10/5/73	12/21/73		NM		28th
1761	(R) 2/20/73	4/25/73	12/21/73		NM		44th
1779	(R) 3/1/73	4/25/73	12/21/73		NM		43rd
2088	(D) 8/20/73	11/30/73	12/21/73		NM		17th
2124	(R) 9/17/73	11/30/73	12/21/73		NM		13th
1977	(R) 6/29/73	10/24/73	12/21/73		NM		26th
1943	(D) 6/11/73	10/5/73	12/21/73		DM		28th
1987	(D) 7/3/73	10/12/73	12/21/73		DM&NM		25th
2098& 2155	(D) 8/23/73 9/7/73	10/30/73	12/18/73		PM	A	18th
2036	(D) 7/25/73	11/7/73	12/10/73	12/19/73	PM	A	22nd

I.G.C. No.	*Date of Complaint*	*Date of Hearing*	*Date of I.G.C. Decision*	*Date of Secretary's Disposition*	*I.G.C. Disposition*	*Secretary's Disposition*	*Week of Final Decision*
2117	(D) 9/5/73	11/16/73	12/10/73	12/19/73	M	A	16th
2020	(D) 7/19/73	10/17/73	12/10/73	12/19/73	M	A	22nd
	(R) 7/23/73						
2042	(D) 7/30/73	10/17/73	12/10/73		NM		20th
2023	(R) 7/23/73	10/10/73	12/10/73		NM		21st
1973	(R) 6/27/73	9/10/73	12/10/73		NM		24th
2104	(D) 8/31/73	11/14/73	12/10/73		NM		15th
1489	(D) 8/31/72	10/26/73	12/10/73		NM		67th
2080	(D) 8/14/73	10/19/73	12/10/73		DM		17th
2147	(D) 9/23/73	11/28/73	12/10/73		NM		12th
2132& 2119	(R) 9/11/73	10/30/73	12/10/73		NM		13th
2113	(D) 9/3/73	11/16/73	12/10/73		NM		15th
2112	(D) 9/4/73	11/16/73	12/10/73		DM		15th
1936	(R) 6/6/73	9/11/73	12/4/73		NM		26th
1923	(D) 5/30/73	9/10/73	12/4/73		NM		27th
1805	(R) 3/22/73	10/3/73	12/4/73		NM		37th
1981	(D) 6/27/73	9/26/73	12/4/73		NM		23rd
1950	(D) 6/11/73	9/21/73	12/4/73		NM		26th
2105	(D) 8/28/73	11/14/73	12/4/73	12/5/73	M	A	15th
2038	(D) 7/23/73	11/7/73	12/4/73	12/5/73	M	A	20th
1971	(D) 6/26/73	10/10/73	11/29/73		NM		23rd
1932	(D) 6/1/73	9/7/73	11/29/73		NM		26th
2037	(D) 7/26/73	11/7/73	11/29/73		NM		19th
1986	(D) 7/5/73	9/10/73	11/29/73		NM		22nd
1934	(D) 6/2/73	9/10/73	11/29/73		DM		26th
2029	(D) 7/23/73	11/7/73	11/29/73		NM		19th
1951	(D) 6/13/73	10/31/73	11/29/73	12/3/73	M	A	25th
2030	(D) 7/30/73	11/7/73	11/29/73	12/3/73	M	A	23rd
2056	(D) 8/1/73	10/31/73	11/29/73	12/3/73	M	A	18th
2103	(R) 8/30/73	11/14/73	11/27/73	11/28/73	M	A	13th
2094	(R) 8/24/73	10/30/73	11/27/73	11/28/73	M	A	14th

I.G.C. No.	*Date of Complaint*	*Date of Hearing*	*Date of I.G.C. Decision*	*Date of Secretary's Disposition*	*I.G.C. Disposition*	*Secretary's Disposition*	*Week of Final Decision*
2014	(D) 7/16/73	9/28/73	11/27/73	12/3/73	M	A	21st
2022	(R) 7/23/73	9/28/73	1/27/73	11/30/73	M	A	19th
1852	(R) 4/23/73	10/3/73	11/27/73	11/28/73	M	A	32nd
2089	(D) 8/20/73	10/31/73	11/27/73	12/3/73	M	M	16th
2012	(R) 7/19/73	9/28/73	11/27/73	11/29/73	M	A	20th
1979	(D) 6/28/73	9/26/73	11/27/73	11/28/73	M	A	22nd
1461	(D) 8/15/72	10/26/73	11/27/73	11/29/73	M	A	68th
1900	5/16/73	9/7/73	11/27/73		NM		28th
2050	(R) 8/2/73	10/17/73	11/27/73		NM		17th
2071	(R) 8/13/73	10/26/73	11/27/73		NM		16th
1949	(R) 6/14/73	9/21/73	10/24/73		NM		19th
1966	(D) 6/26/73	10/24/73	11/27/73		NM		23rd
2034	(D) 7/25/73	10/19/73	11/27/73		NM		18th
2073	(R) 8/14/73	10/19/73	1/27/73		DM&NM		16th
1976	(D) 6/26/73	10/12/73	11/27/73		NM		23rd
1872	(D) 5/3/73	10/3/73	11/27/73		NM		30th
1990	(R) 7/6/73	10/10/73	11/27/73		NM		21st
1975	(D) 6/26/73	9/26/73	11/27/73		NM		23rd
1991	(D) 7/5/73	9/26/73	11/27/73		NM		21st
1959	(D) 6/18/73	10/5/73	11/27/73		NM		24th
1816	(D) 3/23/73	4/30/73	11/27/73		NM		36th
1789	(R) 3/12/73	5/16/73	11/19/73		NM		37th
2101	(D) 8/25/73	10/31/73	11/19/73	11/26/73	PM	A	14th
2086	(D) 8/17/73	10/30/73	11/19/73	11/26/73	M	A	15th
2055	(R) 8/6/73	10/19/73	11/19/73	11/26/73	M	A	17th
1862	(D) 4/21/73	9/19/73	11/19/73		NM		31st
1963	(D) 6/20/73	10/10/73	11/19/73		NM		22nd
1741	(D) 2/5/73	4/30/73	11/19/73		NM		42nd
1498	(D) 9/1/72	8/1/73	11/19/73		NM		64th
1899	(D) 5/17/73	10/24/73	11/19/73		NM		27th
1730	(D) 1/28/73	4/25/73	11/19/73		NM		43rd
1954& 2025	(D) 6/10/73	9/21/73	11/19/73		NM		24th

In addition to the foregoing information, my examination of the same decisions of the Inmate Grievance Commission also indicated that of the total of 127 cases heard by the Commission, the inmate was represented by counsel at 15 hearings, by a law student at 12 hearings, and by another inmate at 34 hearings, and the inmate represented himself at 66 hearings.

Respectfully submitted,

JOSEPHINE K. GUMP,
Josephine K. Gump,
Prisoner Assistance Project
Legal Aid Bureau, Inc.,
341 North Calvert Street,
Baltimore, Maryland 21202,
539-5340.

In the United States District Court
for the District of Maryland

Civil No. 73-1025-N

John Washington,
Plaintiff,
v.
Dr. Harold M. Boslow, et al.,
Defendants.

Deposition of DENE L. LUSBY, taken on Thursday, February 28, 1974, at 10 o'clock a.m., at Suite 420, Executive Plaza One, Hunt Valley, Maryland, before Andrew A. Castiglione, Notary Public.

Appearances:

Charles F. Morgan, Esquire
On behalf of the Plaintiff

Donald R. Stutman, Assistant Attorney General
On behalf of the Defendants

Reported by:
A. A. Castiglione

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(8) Q. Do you have any further statements of policy in addition— A. Written?

Q. Right, written. A. No.

Q. Is there any other further written rule, regulation, policy or procedure or anything of that nature that the Grievance Commission uses in its normal course of business that is not contained in those regulations? A. You said written?

Q. Written. A. No.

Q. Mr. Lusby, I would like to go through with you very briefly the procedure that is used when a complaint is received by the office from an inmate, and first, I think, we should say how is a complaint normally received and then what happens when you receive it? A. Most complaints are received in the form of letters which arrive in the mail. They are opened by the secretarial staff, docketed in various means, index cards, the docket book, two docket books, in fact. Then (9) they come to me, where I review them for purposes of determining jurisdiction and whether or not I think amicable resolution of the problem can be worked out to the inmate's advantage with the pertinent institution, whether at that immediate moment in time or in the course of the investigation that develops thereafter.

Q. And what is the next step that you would take after you do that preliminary review? A. If it can't — if the grievance cannot be informally resolved and if we have jurisdiction, a hearing is held. It is scheduled by me for the institution involved and a formal hearing is heard with a quorum of at least three of the Commissioners.

Q. Would it be fair to say then, in the case of any complaint that comes into the office or any grievance that comes into the office, it's either the subject of what I think your term is administrative dismissal — is that your term? A. Yes.

Q. Or informal disposition? A. Right.

(10) Q. Or it goes to a hearing? A. Right.

Q. There is no other possibility, is that right? A. I think your term is much better than ours, informal disposition, right.

Q. Informal disposition would be a better term? A. I think it's a better term than the one we've been operating under.

Q. The one you have been operating under is administrative disposition? A. Right.

Q. There is no other form other than those two? It is either administratively dismissed or it goes to a hearing? A. Yes.

Q. Do you know, Mr. Lusby, how the inmates in the Division of Correction and Patuxent Institution find out about the Inmate's Grievance Commission? A. Yes. They know by the grapevine, a slang term for word-of-mouth, but primarily the formal method that is used to acquaint them of the existence and (11) jurisdiction and procedures and so forth of the Commission is the inmate information sheet which is distributed to them as they pass through the reception center after having been sentenced to the custody of the Division of Correction or the Patuxent Institution, as the case may be, and they also at that time, as part of their indoctrination or orientation, whatever it might be called, the reception center at Patuxent Institution, receives a lecture about the Commission of about, as I understand it, about a half hour long.

Q. Is the lecture being delivered by institution personnel? A. Yes.

Q. How does an inmate, if you know, Mr. Lusby, find out about how to file a complaint? Apart from finding out about the existence of the Commission, how do they find out about the procedure for filing a complaint? A. That's in the inmate information sheet.

Q. That's in there also? A. And if they don't follow the rather strict outlines for the filing of a complaint set forth on that (12) sheet, it doesn't make any difference to us. We go ahead with it and develop the information that we need, anyway.

Q. Mr. Lusby, I would like to ask you some fairly specific questions about the cases that you refer to as administrative dismissals or informal dispositions. Prior to this deposition, I might state for the record, the Plaintiff filed a subpoena duces tecum to Mr. Lusby to produce at this deposition a number of the files, I believe from July of last summer, of the administrative dismissals and he was kind enough to allow me to look through those yesterday before the deposition and

because of the large number of them, I propose only to ask you questions about those which have been disposed of since the first part of December, 1973, which is a total of about 50 cases, I think.

I would like to ask you the same general question about each one of them, but before we do that, could you first tell me if the cases that have been administratively dismissed since the 1st of December, 1973 are representative of typical administrative dismissals? (13) A. I have no idea, because I did not look at that group after you left yesterday.

Q. Well— A. I will be able to answer that question after we have gone through them.

Q. Is there any reason to believe that, from this point on, there will be a change in the way administrative dismissals are dealt with? A. Oh, no.

Q. Is there any reason to believe that administrative dismissals were dealt with differently before December 1, than they were during the period after December 1? A. No.

Q. So my question, after we go through them, will be then whether this particular batch is typical of the rest. A. Right.

Q. I think probably they are in the same order that I looked through them yesterday and, if so, the one on top would be Inmate Grievance Commission Decision No. 2122. (27) five adjustment reports and five on-the-spot reports during 1973, and the additional fact that his 20-year sentence had since he was confined in the MCI been increased to a total of 40 years as a result of a subsequent rape conviction.

Q. Would this be another case then that fits into the category of the complaint appearing to be totally lacking in merit on its face? A. Yes, absolutely.

Q. Going back to that case again, Mr. Lusby, because I had the opportunity to look through these files yesterday, I need not look at it now, but I noticed in that file there was a letter from you dated February 22, 1974. I wonder if you could take a look at that letter, please. A. February 22? Yes.

Q. That was in file No. 2408. That letter, as I recall, deals with the witnesses that this person might want to have at a hearing, were a hearing to be held. A. Right.

Q. And it appears to be a statement of some policy (28) of the Commission. I was wondering if you could explain what you were telling the inmate there and whether that is a common practice or policy of the Commission? A. This is about the only one that I can remember of these in my approximately two years here. The witnesses that he requested would all have merely testified to matters that are contained in his base file, and I wrote him to that affect.

Q. Well, is it the normal practice with regard to evidence taken at Grievance Commission hearings then to not permit witnesses to testify where there are written documents available? Is that what you are saying in that letter to him? A. No, no.

Q. What are you saying? A. He had asked for about 15 or 20 witnesses, all the way from the Superintendent of the Institution down to tier officers, and the Statute and the regulations provide for a reasonable number of relevant witnesses and it was pursuant to that that I wrote this letter to him.

Q. Could I see that file? (29) A. (Handing).

Q. Well, let me ask you this, Mr. Lusby, to try to clarify this in my mind. Are you telling this guy that he can't have these witnesses at the hearing because there are too many of them or because what they are going to say is already reflected in written reports in his files or some other reason? A. No. I intended to explain to him that the things that he seemed to be concerned about bringing before the Commission would be before the Commission and that there was no need to have those particular people there because the Commission would have all of that material before it to consider it, that he need have no concern that what he wanted would not be considered by the Commission.

Q. What is the next file you have, Mr. Lusby? A. 2420, Rites.

Q. What was the disposition there? A. This file was closed after exchange of correspondence between the Secretary and me and Mr. Rites and three replies by Mr. Rites to our invitations to him to file specific grievances rather than to indicate his general (30) dissatisfaction with being at the Patuxent Institution and his failure to do so.

Q. His complaint was lacking in specificity, would you say? A. He never filed a grievance.

Q. What is in that file, then? A. What's in the file?

Q. What are the communications from him that are in the file? A. Well, he rambles about lack of rehabilitation — rehabilitation facilities. Apparently he doesn't feel that the psychiatric staff is large enough to give him the treatment that he needs.

Q. Do you see a letter in there dated February 23, from him, Mr. Lusby? It's probably the last letter received from him. A. Right.

Q. What are the grievances that he states in that letter? A. Well, he contends first that Bundy versus Cannen permits him to have his attorney at a disciplinary (31) proceeding, which is incorrect.

Q. As a matter of law, that is incorrect? A. At this time. His second item is something vaguely about censorship of outgoing mail and, of course, he is subject to the — and he cites a Texas case. He is subject to the same rules regarding outgoing and incoming mail that all other inmates are.

Q. Is that an issue that the Grievance Commission doesn't have jurisdiction to deal with? A. No, we have jurisdiction to deal with that.

Q. How is that not a complaint then? A. He says he is entitled to no censorship of outgoing mail, which is just totally without — I mean totally lacking in merit. We can call that totally lacking in merit, as we can call the first, without an attorney.

Q. What is the basis for your position that No. 2, regarding mail, is totally lacking in merit? A. He says,

"I'm to mail my letters without censorship," which is being denied him.

Q. I don't mean to argue with you, Mr. Lusby, and I'm sure you see— (32) A. Maybe I don't understand you. I don't know.

Q. I don't mean to argue with you. I'm sure you see a lot of these cases every day. What I'm getting at is if an inmate writes and says I don't think it's proper for the institution to censor my outgoing mail, which is basically what he is saying there, from what I gather from what you are reading? A. That's correct.

Q. How is that not a grievance? How is that not a complaint, because it seems to me it raises pretty substantial causes— A. Because we have heard many cases relating to mail privileges and I am familiar completely with the mail rules, and his statement that his outgoing mail is not subject to censorship is totally incorrect.

Q. You mean his outgoing mail is not subject to censorship at Patuxent, from your experience? A. It is subject to censorship.

Q. Right. And again, I don't mean to argue with you, but isn't he saying that the regulation at Patuxent is the subject of his grievance? Isn't he saying that he (33) disagrees with the Patuxent policy of censoring his mail or Patuxent's practice of censoring his mail? A. He may.

Q. How does that not raise a substantial grievance? A. He may have intended that. It's not here.

Q. Would you read exactly what it says under No. 2? A. "I'm denied 'No Censorship of Outgoing Mail' in accordance with Guajardo versus McAdams, 349 F. Supp. 211 (Southern District of Texas 1972) I am to mail my letters without censorship, which is being denied me."

Q. And that doesn't state a claim? That is wholly lacking on its face? A. Yes.

Q. And your decision that that claim is wholly lacking on its face is based on what? A. Based on

prior decisions of the Commission and knowledge of institutional rules.

Q. Now, that's two things. First you are saying, I think, that the Commission has already had this issue before it and has ruled on it? A. Stare decisis, if you wish.

(34) Q. Then the second reason, really, is unnecessary, I suppose, in light of the first reason, but what is the second reason? You said something about Patuxent's policy or Patuxent's regulations? A. The same thing. I guess I was saying the same thing different ways.

Q. Then the reason the complaint was denied, with regard to No. 2, at least, is not so much because it wasn't specific, but because the complaint had already been raised by another Patuxent inmate, had been ruled upon by the Commission and relief had been denied, is that right? A. I would say it's both, but the second that you have just developed is based on — is 90 percent based upon what you have said and what is not contained in any of his letters to the Commission.

Q. All right. What other complaints, if any, did he raise in that letter besides those two? A. That his punishment is disproportionate to his offense.

Q. That is No. 3. That is all there is to No. 3? (35) A. Do you want me to read the whole thing?

Q. It's a little difficult — you're right, that is nonspecific. A. "In accordance with Wright versus McMann, 460 E.2nd 126 (2nd Cir. 1972) 'No punishment disproportionate to the offense (and therefore cruel and unusual).' I was put into a cell with no bed, blanket, sheet — just a sink and toilet and I had all clothes taken from me."

Now, as a result of experience, what he means by that is that he was thrown into the hole for a brief period of time as a result of something that he did that caused the administration to think that he needed a cooling-off period.

Q. Does that raise — that again doesn't raise a substantial question for the Grievance Commission? It

certainly isn't lacking in specificity. A. It isn't? It is to me.

Q. You just related exactly what happened to him. He was thrown into the hole. A. All he is saying here is that he was thrown in the hole and that is punishment disproportionate to the (35A) offense.

Q. And your position upon reading that is that simply is not punishment disproportionate to the offense?

(Mr. Stutman) One must know what the offense is.

(The Witness) That's right. I don't know what the guy is talking about.

Q. That's what I'm getting at, Mr. Lusby. I don't mean to spend so much time on this particular case, but now that this comes up, I'm wondering why this man didn't have a hearing? A. We tried three times to get him to tell us and this is the type of thing that we get.

Q. Well, this letter that you are reading now is his most recent letter, is that right? A. That's right.

Q. And his third allegation, as I understand from what you read, is that he was placed into what you referred to as the hole, I think he said isolation, for an unspecified period of time. A. And I imagine he's on M-1 now, administrative segregation.

(36) Q. Was this case investigated? Is there anything in the file that indicates it was investigated? A. No, because I don't consider he ever filed a specific grievance.

Q. Has the question of being put in isolation at Patuxent ever been litigated before the Commission? A. Just the mere placing of a person in isolation?

Q. Yes. A. No. The question has arisen several times as to whether it was proper in the circumstances for that patient. You see, what I'm trying to get across to you, if he would say something like that, then we've got a grievance.

Q. Well, is the complaint that you received from him so much different from the complaints you normally receive from inmates? A. Yes.

Q. In what respect? A. They usually tell me what's bothering them and what they want done about it, what they think the administration or the institution has done wrong and what they want (37) done about it. This guy never tells me.

Q. Well, in the normal course of affairs, the Inmate Grievance Commission investigates complaints that come into the office, is that right, most complaints? A. Right.

Q. And again, I don't mean to argue with you about this case, but it appears to me — let me ask you in the form of a question. Doesn't it appear to you now, looking back at this file, at least No. 3, we talked about No. 1 and No. 2, but at least grievance No. 3 is a substantial question? Although admittedly it's not pleaded with the greatest degree of specificity, he does plead that he was placed into isolation under rather serious conditions of confinement, and he is raising the question of whether that punishment was disaproportionate to whatever offense he was put in there for, and my question is, isn't that an issue that the Grievance Commission can deal with? A. What you have stated is an issue that the Inmate Grievance Commission can deal with.

Q. Isn't that what is in the letter? A. All I can say, Mr. Morgan, is maybe he's trying (38) to say that, but he doesn't say it.

Q. Are there any other complaints raised in that letter besides those three, Mr. Lusby? A. "Decent conditions in solitary confinement."

Q. Is that a quote— A. By that—

Q. Is this point No. 4? A. Yes.

Q. Maybe you could read point No. 4? A. "In accordance with Landman versus Poyster, 333 F. Supp. 621 (E.D. Va. 1971). I am allowed 'decent conditions in solitary confinement,' which was denied me."

What he is saying there is he doesn't like the fact — he doesn't like the conditions on administrative segregation. Once again, we have heard many specific cases with regard to administrative segregation.

Q. Does he use the term there administrative segregation? A. No.

Q. He uses the term solitary confinement? A. Yes.

(39) Q. From your experience at Patuxent, there is a difference between solitary confinement and administrative segregation, isn't there? A. He's talking about segregation, I would say.

Q. Well, it's possible— A. Once again, we're talking about this vague thing, you know. You are asking me to give answers and I've got to — I'm trying to imagine what it is and, as a result of my experience, I think he's talking about M-1, administrative segregation.

Q. And that is commonly referred to as solitary confinement? A. Yes.

Q. It is? A. Yes.

Q. All right. With regard to point No. 4, what you are saying is that the complaint was dismissed, if I read correctly what your answer was, the complaint was dismissed because the conditions of administrative segregation at Patuxent have already been raised before the Commission and the Commission has already issued a (40) ruling on those conditions? A. Yes, several.

Q. Is there anything else in the complaint other than those four point? A. One more.

Q. And what does that say? A. "In accordance with Gates versus Collier, 349 F. Supp. 881 (N.D. Miss. 1972). I am allowed 'decent conditions throughout prison, living conditions, medical care, rehabilitation programs, protection from attack by other inmates, et cetera.' I am being denied proper and sufficient medical care, I am being denied entrance into rehabilitation programs and certain decent living conditions are denied me."

Q. That is clearly non-specific, right? A. That is what led me to my final disposition of this matter as it stands now, because he may come back and say he doesn't agree and he wants a hearing, in which case we will give him a hearing and bring him in and ask him what he's talking about and so forth, and maybe he'll say something that constitutes a grievance, and it's (41) very clear in No. 5, which I just read you word for word, that he doesn't like being in the Patuxent Institution. That's his grievance, he doesn't like being in the Patuxent Institution.

Q. Mr. Lusby, before we leave this case, I think for the record, since we referred to the letter rather extensively, would you just mind starting at the beginning and reading that letter from the inmate into the record in its entirety? I think we took parts out of it.

(Mr. Stutman) Why don't we Xerox it and put it in?

(Mr. Morgan) All right, we'll Xerox it and make it Plaintiff's Exhibit No. 2.

(Letter to Mr. Dene Lusby from inmate Leo John Rites citing grievances at Patuxent Institution, dated February 26, 1974, was then marked Plaintiff's Exhibit No. 2.)

(The Witness) 2423, Wagener.

Q. What happened in that case? A. Informal resolution.

Q. And what was the basis for that?

* * * * * *

(75) * * * Grievance Commission?

Q. No. Are the files that we've gone through typical of the administrative dismissals of the Inmate Grievance Commission? A. Yes, they are a representative sample.

Q. Fine. Just a couple of other questions about these administrative dismissals, Mr. Lusby. First of all, does anyone else — is anyone else in the office besides yourself involved in the decision making process with

regard to the administrative dismissals? A. On rare occasions, I consult with one or more Commissioners, if I consider a situation perhaps borderline, but not very often.

Q. Do the Commissioners or anyone else review your decisions after they are made, with regard to administrative dismissals? A. As a matter of routine?

Q. Right. A. No.

Q. No? A. No.

(76) Q. Is there anyone else in the office besides yourself who— A. Incidentally, that is one of my statutory functions.

Q. Right, I know. Is there anyone else in the office who has anything at all to do with administrative dismissals, besides yourself, and whatever clerical work is necessary to process them? A. Not unless I consult with them, on my initiative.

Q. Is the investigation that is done with regard to administrative dismissals done by you or is it done by anyone else? A. It's occasionally done by Mr. Wolf or Mrs. Kaufman, if it consists of something like a phone call or asking someone something at an institution where Mr. Wolf may be going for a hearing.

Q. You mentioned during the course of your testimony about the administrative dismissals, Mr. Lusby, two cases concerning Patuxent Institution or perhaps the Division of Correction generally, and they had to do with decisions the Grievance Commission had made with (77) regard to mail and also with regard to the administrative segregation tier at Patuxent, and I'm wondering if it's possible for us to put those two decisions or more into the record at this deposition? I guess the preliminary inquiry is do you know specifically which ones they were? A. I'd have to search to find them.

Q. Is that a possibility for us? A. You want the administrative segregation at Patuxent and what was the other?

Q. I want whatever you were referring to when we were discussing the Rites case. You were saying with regard to his complaint about mail and his complaint about administrative jurisdiction, as I understood it, those two issues had already been resolved by the Inmate Grievance Commission in other cases and there was no reason to resolve it in his case and what I would like for the record are those decisions. A. All right.

Q. I would appreciate it if you would be able to supply those for us. A. All right.

(78) Q. Mr. Lusby, concerning the cases which are not administrative dismissals, those cases which go to a hearing, how are hearing dates set by the Commission? A. I schedule the hearing dates on a first-in, first-out basis.

Q. First-in, first-out, referring to the complaint received? A. Received, right.

Q. Do you have hearings at certain institutions at certain times or do you wait until you get a group of complaints that are ready to be heard at a certain institution and then schedule a hearing or— A. The latter.

Q. Or— A. That's how it's done, the latter.

Q. You wait until you get a group? A. It doesn't require a wait. We're currently hearing six grievances per session and there are always many more than six there in the files ready to be scheduled, and I take the earliest six and schedule them.

Q. That's where the first-in, first-out comes? (79) A. Right.

Q. Although you may not have the answer to this question at your fingertips, I think probably you will be able to supply it before we finish the deposition and that is, during the past, say 120 days, could you tell us at which institutions hearings have been held and on which dates they were held and how many cases were heard on each one of those dates.

While we are waiting for the answer to that question, let me ask you a couple of others. Are there any

exceptions ever made to really what I think you described as a dual procedure, the first-in, first-out, and second, the accumulation of cases for a certain institution and then the holding of hearings; is there any exception to that dual procedure? A. I will occasionally assign priority to a case and have it set earlier than grievances that have been received prior in time, if you are talking about that.

Q. Right. In other words, that would be an exception to the first-in, first-out rule? A. Yes.

(80) Q. Are there any exceptions to the rule or procedure of practice that you wait until you get a group of grievances and then go to an institution and hear the cases all together? As an example, I will state for the record that you have a frown on your face in connection with that question, so I'll— A. I'm not sure I really get the question.

Q. I'll try to clarify that. My question is, by way of example, do you ever see a case which requires a particularly urgent disposition and have the Commissioners go to an institution to hear that one specific case, completely out of turn with regard to when they would normally go to that institution and also out of turn with regard to when that case would normally come up in the first-in, first-out system? A. No. No. Because we have on a few occasions assumed that we had jurisdiction to issue interim orders, in effect, granting injunctive relief until such time as we adjudicated the matter.

Q. And that would be — an interim order would be issued without a hearing? (81) A. Yes.

Q. You testified, I believe, in the McCray case, that that had been done on one occasion up to that time and I think that was a case called Bradley or Brady at Patuxent? A. That was Bradley, the long visit case and it was also done in the case of Joseph Wallace, a medical treatment case.

Q. Any others? I think you testified— A. They are the only two, I'm sure.

Q. You testified about Arthur Middleton, in the McCray case. A. Was there an interim order there?

Q. I'm asking you if there was. A. I don't think so.

Q. I think — I know, as a matter of fact, that the subpoena duces tecum asked you to bring to this deposition the files of James Brady, Arthur Middleton, and Joseph Wallace, and I think they are there on the table, and I would appreciate it if you would look into each file and state for the record the relevant dates. (82) A. Of what?

Q. Specifically, when the complaint was received, the date of any interim order without a hearing, the date of any hearings and the date of any final orders. A. Middleton, 1272, complaint received April 11, 1972. I see nothing about an interim order. What was the last date you wanted? What other dates do you want?

Q. There was no interim order? A. I don't see one.

Q. All right. And the date of the hearing in that case was what? A. June 30, 1972.

Q. And what was the date of the final order issued in the case? A. Of course, as you know, this has been appealed up and down a few times.

Q. I didn't know that. Just state— A. You want our first order?

Q. Yes, maybe you better state, since there have been appeals, all of the dates and what has occurred since the first order was issued. (83) A. All right. The first order was July 19, '72.

Q. Then what happened? A. You may have asked me about the wrong Middleton case.

Q. In all fairness to me, I didn't ask you about the Middleton case—

(Mr. Stutman) On the subpoena, there are two numbers, 1272 and 1444, regarding Middleton.

(The Witness) I only have 1272, and we're talking about 1444, and 1444 is in the custody and possession of an Assistant Attorney General, Henry J. Frankel, because it's on appeal. Now, I can go to the docket

entries and tell you about that. This isn't what you are looking for. 1272 doesn't bear any resemblance at all to the things you are talking about.

Q. 1444 is also Arthur Middleton, right?

(Mr. Stutman) Right.

Q. Now, Mr. Lusby, as I understand it, you are about to give us some information for the record concerning the case of Arthur Middleton's grievance, on Grievance Commission 1444, is that correct? (84) A. On the basis of our docket book.

Q. What you have in your lap is the Inmate Grievance Commission docket book? A. Yes.

Q. You are going to read from it? A. The complaint was received on August 14, 1972. November 1, the hearing was held at the House of Correction, with the Commission's order issued November 30, 1972, finding the complaint without merit. On December 12, I got a letter from Middleton asking about appeal procedures and I informed him.

Q. All right. I think we can probably— A. On January 2, he appealed. On January 3, everything was forwarded to Mr. Frankel.

Q. Excuse me, Mr. Lusby, I think we can probably stop there because the only subject of my inquiry is the interim order and, from what I understand you to say, there was no interim order issued in that case, is that right? A. No.

Q. Have there been, to your knowledge, any other (85) Middleton cases to which you may have been referring in your testimony in the McCray case? A. I don't remember that. I wish I could see it.

Q. You don't recall that testimony? A. No. Do you have it with you?

(Mr. Stutman) Is that the long visit case you are talking about?

(Mr. Morgan) No, we're talking about the Arthur Middleton cases.

Q. Do you have your cases listed anywhere by alphabetical order? Perhaps we could check there and see if there is another Middleton case.

Now, have you got the file on the Bradley case, Mr. Lusby? A. Yes.

Q. What is the number of that Inmate Grievance Commission case and what is the name of the complainant? A. 1383, James Bradley, et al.

Q. Now, in this case, you are not reading from the docket book? You are reading from the file itself, is that correct? (86) A. Right.

Q. That's James Bradley? A. Right.

Q. Now, could you state for the record, Mr. Lusby, what happened in that case as far as when the complaint was received, the date of an interim order and the date of any hearings and the date of any final order? A. The grievance was received here on July 11, 1972. On July 11, '72, we issued an interim order staying the institution's suspension of long visits at the Patuxent Institution until such time as we heard the grievance and issued our order.

Q. And was there ever a hearing held in that case? A. There was never a hearing held because fall came and long visit time passed and the institution wished not to pursue it.

Q. Was there ever a final order issued in the case? A. Yes, September 22, 1972. There was a hearing held on August 7.

Q. August 7? (87) A. August 7.

Q. Of '72? A. Right. The order was issued on September 22, '72.

Q. That would be the final order, is that right? A. Right.

Q. Now, just so I've got it straight, Mr. Lusby, the complaint was received by you on July 11, '72, and the interim order was issued on the same day, July 11, '72? A. Right.

Q. And, obviously, without a hearing of any kind? A. Right.

Q. Now, could we turn to the Joseph Wallace file? Well, why don't we get to Middleton now? A. No interim orders in any Middleton cases.

Q. What was that you were just looking at, Mr. Lusby? A. Index cards.

Q. And do they indicate that there are no other Middleton cases besides the two we have just discussed? (88) A. Yes, no others.

Q. Could we turn to Joseph Wallace? I believe you have his file there, is that right? A. Yes.

Q. What is the number of his case before the Commission? A. 1521.

Q. Now, could you give us the dates again of the relevant information there, the date the complaint was received, the date an interim order was issued and the date of any hearings held in the case? A. Complaint received September 25, 1972. Hearing held November 29, 1972. Hearing continued on December 13, 1972. December 4, 1972, issuance of interim order.

Q. December 4? A. December 4, ordering Mr. Wallace to be taken to University Hospital for appropriate examination.

Q. Was there a final order in the case, as well? A. Order issued April 26, '73.

Q. Were there any other hearings or orders issued in that case? (89) A. No.

Q. And Wallace's complaint was— A. Inadequate medical treatment.

Q. And his present need— A. For gunshot wounds received while out on escape during a crap game.

Q. His complaint was his present need for medical treatment and that was the need for the order for him to go to the hospital? A. Right.

Q. Now, as I understnad from what you say, unlike in the Bradley case, where the interim order was issued in the absence of a hearing, in this case the interim

order was issued after the first hearing but before the second hearing? A. Right.

Q. And the interim order was issued on December 4, '72, and the complaint was received on September 25, '72, is that right? A. If that's what I said.

Q. I wrote those down and I want to check that, (90) because those dates are important. A. Right.

Q. Getting back to the procedure that you go through in preparing a case for a hearing, Mr. Lusby, prior to the time that the case is actually heard by the Commissioners, what contacts either by telephone or by correspondence or personal contacts do you typically have with the people who are complained against by the prisoner, loosely, the Defendants, people in the institution are the subject of the complaint? A. The specific individuals?

Q. Either the specific individuals or their employers or supervisor or anyone who could roughly be termed on the Defendant's side of the case. A. Rarely, if ever, with the specific individual, when a specific individual is named, which isn't that often. Ninety to ninety-five percent of the time, contact is with an institutional representative who has been assigned for these purposes to act as liaison with the Commission.

Q. Does each institution have one of those? (91) A. Yes.

Q. And, as I see it or as I understand it, your usual procedure would then be, upon receipt of a grievance and recognizing it as one that was going to go for a hearing, you would get in contact either by mail or over the phone, I assume, with an institutional representative and ask him or tell him to do what? A. Either furnish appropriate records and/or look into and advise, when I think that the institution's awareness of the situation will result in it being corrected.

Q. Without the need for a hearing, you mean? A. Right.

Q. Would you typically tell the institutional representative to talk to the person, if there is a person named as the Defendant, talk to that person? A. Never.

Q. Do you have any personal knowledge as to whether the institutional representative does in fact talk to that person? A. I have no personal knowledge, no.

(92) Q. Have you ever received back, in addition to institutional records, a statement from the institutional representative to the effect that, "I have talked with the guard being named here and his statement to me is as follows"? A. Oh, yes.

Q. Well, then there is some indication that the institutional representative does talk to the Defendant specifically about the case and then relays that information back to you? A. From time to time.

Q. Does this contact that you have with the institutional representative occur in every case that goes to a hearing? A. I think so.

Q. Is there any other role the institutional representative plays besides sending you whatever documents the institution might have and sending you whatever statement he might have, from the point of view of the Defendant? A. He's also the person who presents the (93) institution's position to the Commission at the hearing.

Q. Before the hearing itself, does he have any other functions, besides those two, that you are aware of? A. I don't think so.

Q. Does the institutional representative, by way of example, to your knowledge, contact the complaining inmate in the case prior to the hearing? A. No.

Q. Has there ever been a case that you know of where he has done that? A. I can't cite you a specific case, but there have been a small number where once the institution received the synopsis letter telling them that the following cases are to be heard by the Commission at your institution on such and such a date and the synopsis of what the grievance is about, that they will contact the inmate and say, why didn't you just come to us instead of hauling off and filing a grievance, and that is very often when they are withdrawn. That will happen very often at Patuxent, for example. The

patient hauls off and (94) files a grievance and he has never said anything to anybody, to his social worker or anybody, about what is bothering him, and the first time the institution learns about it is when they get my synopsis letter, and sometimes then they go to him and say, why didn't you tell us that was bothering you, and quite often work it out. A lot of these things are caused by failure to communicate.

Q. I'm sure they are. Does anyone from the Inmate Grievance Commission prior to the hearing contact the complaining inmate personally? A. Extremely rarely. There was a time when we did it in every case. When I first became Executive Director, that was the practice and it was being done by a college student who was serving as investigator, under the title of investigator, and it became quickly apparent to me that the issues were becoming obfuscated rather than clarified, which was the intent behind the contact and that it was much more often than not disruptive rather than productive regarding the Commission's procedures, and it stopped after a few months of my becoming the Executive Director and has not been resumed.

(95) Q. What was your experience with regard to the process of having the investigator talk to the inmate before the hearing tended to obfuscate the issue and what is your experience with regard to how that was disruptive? A. Because things got way off track from what the grievance was. As it is now, the inmate comes into the hearing and then discusses his grievance with the Commissioners. Beforehand, when he was talking with the investigator and then later with the Commission, either the grievance had changed entirely in nature or things had been added or deleted and it was just a confusing condition.

Q. Could that condition— A. For the reason that in talking with the investigator, he thought of other things, he forgot some. It's much more orderly to go on the grievance, have the grievance held and if he brings up something additional at the hearing at the institution, in all fairness, because we have to be impartial, it's not prepared to respond to it at the time, then we tell

him to file a grievance on that subject and we have another hearing at (96) sometime in the future on that grievance.

Q. Let me ask you this. Assuming your investigator could discipline himself to get information only about the specific grievance and during his conversation inform the person that only that was the information that he was getting, do you think that that would be a valuable addition to the Commission or do you think that there is no need to contact the inmate except through your formal letters before the hearing? A. I think you got the wrong impression from my answer. The situation did not occur as a result of any shortcoming on the part of the investigator. It was a result of the inmate using the safety valve mechanism that the Commission represents for the first time and so many things flowing out of his head that were bothering him, that it was impossible for the investigator to contain, to restrict the interview to the grievance that had been filed. In fact, to have tried to do so would have given the inmate the impression that he was just dealing with another state tool that didn't want to hear about his problems and that sort of thing, which (97) we definitely don't want to do.

Q. Well, before the hearing, in addition to the complaint you receive from the inmate, and I think you testified either here or in the other case, the McCray case, that you send him a letter and indicate he should send back to you a list of what witnesses he wants at the hearing and any letters that he may send to you between the time he sends the first complaint and the hearing itself, do you receive any other information from him, either through letters where you may solicit specific information as an investigator, or a telephone call or personal contact of any kind? A. Both. It's not at all unusual to receive follow-up letters, solicited or unsolicited, from the complaining inmate containing additional information.

Q. Why would you typically solicit a follow-up letter? A. No, I said it's not at all unusual to receive, whether solicited or unsolicited, follow-up letters.

Q. If you receive a letter that is unsolicited, obviously you can't speak for why it was sent? (98) A. Right.

Q. If you receive one that was solicited by you, why was the letter sent by you, typically? A. To gain information that was necessary for the Commission to be properly prepared to conduct a hearing and for the institution to have a fair opportunity to present its position.

Q. And it's been your experience then, to solicit the information, a letter is more satisfactory rather than having an investigator go and solicit the information? A. One-hundred percent.

Q. Is there any information — well, the information that comes from the inmate and the information that comes from the institution prior to the hearing, and I think we've discussed it all on both sides at this point, is that right, in general terms, at least? A. Do you want to read it back?

Q. You don't have to read it back. A. Since I was just asked to agree to something.

Q. I won't ask you to agree to anything, Mr. (99) Lusby. I'll rephrase the question. You testified to information that you received from the institutional representative which comes in the form of copies of documents to the institution and sometimes in statements from the Defendant in the case. A. Informative letters and telephone calls from the institution and so forth.

Q. Any information the institutional representative seeks to have you have? A. Right.

Q. You also testified, from the inmate's side, you get his complaint, you get his list of witnesses and a letter from him occasionally which may be solicited or unsolicited. You don't get that in every case, as I understand? A. Right.

Q. Is there any other information you receive before a hearing besides those two general categories of information? A. I can't think of any.

Q. What happens to that information prior to (100) the hearing? A. It goes into the file.

Q. Into the file in the case? A. Yes.

Q. And that file is at the hearing, I assume? A. Of course, yes.

Q. What happens to the file between the time — well, you hold the file until it's complete, I assume? A. Yes.

Q. And then you give it to whom? A. Well, Mr. Wolf now carries the files to the hearing and brings them back.

Q. Do the Commissioners see the file before the hearing, typically? A. Yes.

Q. Do they see it before the date of the hearing, typically? A. Yes.

Q. How do they see it? A. How do they see it? They look at it.

Q. How do they see it, under what circumstances? (101) You testified you hold it until you give it to Mr. Wolf who takes it to the hearing? A. Yes.

Q. My question is when do the Commissioners see it, except at the hearing or just before the hearing? A. Well, it's here all the time. The Commissioners are in and out.

Q. That's my question. Do the Commissioners look at the file prior to the hearing while it's in the office in the process of being compiled? A. From time to time.

Q. Do you set hearing dates, by the way, when the file is completed or do you set the hearing date and then try to work the file to be completed by that hearing date? A. After it's completed. When it's ready to be set. When it's ready.

Q. In other words, the time the hearing is set is related then to when the file is completed? A. That's right.

Q. And the hearing date won't be set until the (102) file was complete? A. Correct.

Q. Now, when the file is completed, there is obviously a period of time between that day and the day of the hearing, right? A. Correct.

Q. Now, where is the file during that period of time? A. In the file cabinets in the next office.

Q. And the Commissioners would have access to that during that time? A. Right.

Q. And then Mr. Wolf would take the file to the hearing the day of the hearing? A. Right.

Q. Now, is there any other information that would go in the file at any point during this whole procedure that we've discussed up to the day of the hearing, besides the stuff that you would put in? A. No, I don't think so.

(103) Q. No? A. I can't think of anything.

(Mr. Morgan) Off the record

(Discussion held off the record.)

Q. All right, Mr. Lusby, one other question about pre-hearing procedure, and that is this. As I understand it, the inmate is informed that his case will be heard before the Commission and he's told that he is to send a list of witnesses. Does the inmate prior to the hearing receive from the Commission any statement of the procedures that are to be followed at the Commission hearing— A. I'm lost. I'm sorry.

Q. Let me rephrase the question. Let the record show Mr. Jordan stuck his head in the door and interrupted.

The question is this. When an inmate is informed that he's going to have a hearing before the Grievance Commission, does the Commission routinely send him or otherwise inform him of what the procedure will be before the Commission, specifically with regard to witnesses, his rights with regard to cross-examination, (104) his rights with regard to counsel, how the evidence will be considered and any other procedures that will take place at the Commission? A. Yes.

Q. And also any other rights that he may have as a litigant before the Commission? A. Yes. He receives a notification letter which contains all of that.

Q. And you have one of those? A. Several.

Q. All right, you have handed me, Mr. Lusby, what you refer to as a notification letter, correct? A. Correct.

(Mr. Morgan) We would like to introduce this, if there is no objection, Mr. Stutman, as Plaintiff's Exhibit No. 4.

(Mr. Stutman) No objection.

(Notification letter sent to inmates from the Commission was then marked as Plaintiff's Exhibit No. 4.)

Q. Let me just ask you two other questions, Mr. Lusby, about pre-hearing matters. First of all, in the (105) Statute, the Inmate Grievance Committee Statute or in the Inmate Grievance Commission regulations which are in evidence here today, is there any provision for any prehearing discovery on the part of the inmate? A. No.

Q. Again, Mr. Lusby, before hearings— A. Let me amplify on that a bit. That does not mean that I do not from time to time, when I consider it in the inmate's interest, in order that the Commission fairly decide the matter, accumulate for the purpose of the Commission's decision such information as documentary evidence as I consider necessary on the inmate's behalf. In other words, when I got — when I'm pulling it together, I pull it together from the inmate's side and the institution's side.

Q. Well, now that you have chosen to amplify, maybe you better amplify— A. But there is nothing in the Statute or regulation. The Statute does not provide for discovery procedures.

Q. And what you are saying is, I think, and correct (106) me if I'm wrong, what you are saying is occasionally, in order for there to be a fair hearing, it's necessary for you to gather information which relates to the Plaintiff's side of the case, right? A. Yes.

Q. Now, you testified that before the hearing you may talk to the institutional representative or write to him and you may write to the inmate. Is there typically

anybody else that you would contact, either over the telephone or in correspondence before a hearing, and by way of example, I would suggest a witness or somebody at the institution other than an institutional representative, some other inmate, any other third party that you could think of that you would— A. An inmate representative is notified.

Q. How is he notified? A. He receives a copy of the notification letter.

Q. The same notification letter that is Plaintiff's Exhibit No. 4? A. No. 4, right. I receive calls from many witnesses.

(107) Q. Inmate witnesses? A. A couple of times. I don't know where they got a telephone. Mostly from witnesses that the inmate has requested and I passed that information along in the synopsis letter to the institution and the liaison man at the institution has notified the witnesses and they either don't want to appear or don't know what it's about and don't want to know what it's about.

Q. And these people you talk to, potential witnesses, are typically institutional personnel as opposed to inmates? A. Sometimes they are institution personnel, not inmates, because they don't have access to phones. I get letters from some of them saying they don't wish to appear for the inmate.

Q. Right. A. And doctors, physicians, nurses, lawyers.

Q. I don't have any further questions, Mr. Lusby, about pre-hearing procedure, except one, and that is the one we have to come back to.

(108) During the past 120 days, could you tell us how— A. I don't have a Julian calendar. Can you tell me a specific date?

Q. 120 days back? A. Yes. Do you want December 1, or what, November 1?

Q. What is the most recent date that you have? A. The most recent?

Q. Yes. A. Are you talking about that have been heard or have been scheduled?

Q. That have been heard. A. February 27, 1974.

Q. Why don't you do it, then, from October 1 to the present? A. Are we going to need the docket book any longer?

Q. I don't think so. A. Where do you want to go from?

Q. October 1 to the present. (109) A. You want the date and the number—

Q. From October 1 to the present, what I want to know is at what institutions hearings were held and on what dates and, if your records reflect it, how many cases were heard on a particular date, on each of those dates? A. How many were scheduled and how many were heard?

Q. How many were heard. A. You want to know how many were heard on what date from October 1 to now?

Q. Yes. A. October 3, 1973, 5 at the Penitentiary; October 5, 5 at the Penitentiary; October 10, Penitentiary, 5; October 12, Penitentiary, 5; October 17, at the House of Correction, 5; October 19, at the House of Correction, 5; October 24, Patuxent, 6; October 26, House of Correction, 6; October 30, at MCI, 11; October 31, at MCTC, 4.

November 2, Penitentiary, 5; November 14, House of Correction, 3; November 16, House of Correction, 4; November 21, Penitentiary, 1; November 23, Penitentiary, (110) 2; November 28, Penitentiary, 3; November 30, House of Correction, 5.

December 5, House of Correction, 2; December 7, House of Correction, 4; December 12, Penitentiary 4; December 14, House of Correction, 6.

January 4, '74, Penitentiary, 5; January 6, MCI, 8; January 9, MCTC, 4; January 16, House of Correction, 5; January 18, House of Correction, 5; January 25, House of Correction, 7; January 30, House of Correction 5.

February 1, Patuxent, 4; February 6, Penitentiary, 6; February 13, MCI, 10; February 14, MCTC, 7; February 20, Penitentiary, 4; February 21, Penitentiary, 1; February 22, House of Correction, 8. That's it.

Q. Now, Mr. Lusby, at the hearing, just a couple of questions. First of all, is it true that the hearing is conducted in accordance with the regulations of the Commission and in accordance with the Grievance Commission Statute? A. Did you specify a particular institution?

Q. No, I specified all hearings. A. At the hearings?

(111) Q. All hearings, yes. A. Yes.

Q. All hearings are conducted in accordance with each of those? A. Yes.

Q. Are there any other regulations, rules, procedures or policies written that guide the Grievance Commission at a hearing? A. You mean writing relating specifically to the Inmate Grievance Commission?

Q. Relating specifically to the conduct of an Inmate Grievance Commission hearing. A. No.

Q. Are there any such unwritten rules, regulations, policies, practiced? A. Yes. We follow the usual quasi-judicial administrative agency guideline of accepting evidence which is of the caliber that would lead a responsible person in the conduct of a, his normal business affairs to make a rational decision.

Q. Anything else? Any other unwritten practices? (112) A. No.

Q. After the hearing, Mr. Lusby, could you explain what the decision making process is, and by that I mean when does it take place, who participates in it, where does it take place and any other thing that you think is relative in defining the decision making process? A. It usually occurs immediately following the hearing session at the institution before the Commissioners go their separate ways. There is a discussion period attended by Mr. Wolf and, if I am there, by me, at which time the Commissioners decide, if possible to do so then, what they wish their decision

to be and instruct Mr. Wolf of along what lines to draft the order for their review.

On rare occasions, the decision is made later, either in personal conferences or by phone call conferences when they, for example, think they would like to think it over for awhile, that sort of thing.

Q. Does anyone besides the Commissioners who actually heard the case participate in the decision making process? (113) A. Occasionally, I am asked what I think about a certain matter.

Q. And, to your knowledge, does that also happen with regard to Mr. Wolf? Is he occasionally asked, do you know? A. It's my belief that he is not.

Q. How about Commissioners who don't necessarily hear the case, but who are Commissioners, are they typically asked their opinion or have they been asked their opinion? A. Occasionally.

Q. How about the Secretary— A. You are talking about somebody on the panel being asked about a matter he didn't hear, involving a question of law or something like that?

Q. Yes. A. That would happen, for example, when the three non-lawyer members constituted the panel that heard the case and perhaps a heavy constitutional question came up and they would solicit the advise of Mr. Boss, the Chairman, and/or me with regard to the legal (14) ramifications.

Q. As I understand it from your prior testimony, the advice of the Attorney General's office is also occasionally solicited? A. Yes, extremely rarely.

Q. Who does that normally? A. Who requests it?

Q. Yes, who requests it? A. I do.

Q. And the Commissioners would ask you to request it and then you would make the formal request? A. Right.

Q. The deposition asked you to bring with you today any Attorney General's opinions that you received, and I am not going to ask that they be introduced into

evidence and I am not going to ask you what the opinion of the Attorney General was, but I would appreciate it if you would state for the record the number of the cases in which opinions were asked and, if you can, without a whole lot of effort, be able to tell what the issue was the Attorney General was asked to resolve? (115) A. We didn't ask any in this one, May 10, 1973. The Secretary requested the opinion of the Attorney General in—

Q. Before you begin, Mr. Lusby, do you have there a file of all the Attorney General's opinions that you have received, the Commission has received? A. These are just things that relate in any manner to the Attorney General's office.

Q. How many total opinions have you or the Secretary received? A. Four.

Q. Four, total? A. Four.

Q. Could you tell us what cases they were asked opinions for? A. May 10, the Secretary asked for, I can't tell you which case it was, because I've got the opinion of the Attorney General and it doesn't reference the case.

Q. Can you tell generally what the topic is? A. Adjustment procedures and the extent of due process required.

(116) Q. Could you give us the same information for the other three, the number of the case, if it's available and the subject matter? A. May 25, '73, an opinion of the Attorney General re: Edward T. Green, our number 1273. Liability of correctional institutions for the torts of its agents. In other words, the applicability, if any, of the doctrine of respondeat superior.

September 7, 1973, an opinion to me, asking the advice and receiving the advice from the Attorney General about whether or not we can erase out cassette tapes in order to reuse them after a reasonable period of time has elasped. Is this not a superlative response to a subpoena duces tecum?

October 1, 1973, the Secretary requested the advice of the Attorney General and received it on the question of since the Inmate Grievance Commission is an administrative agency and its proceedings are civil in nature, the rules of indigency apply.

Q. Mr. Lusby, I think where we were when we — how do you determine, Mr. Lusby, what Commissioners are (117) going to hear what cases? A. They work that out among themselves. I send them copies of the synopsis letters to the institutions which puts them on notice that a hearing is going to be held at a certain institution on a certain date, and they determine among themselves who is going to attend.

Q. I think where we were, Mr. Lusby, when we broke into talking about the Attorney General's opinions for a moment, that is who participates in the decision making process, and you testified that you occasionally are asked about a case or the Commissioners who were not necessarily sitting on the case may be asked. The final question along that line, to your knowledge, does Secretary Lally ever participate in the decision making process in any way? A. You are talking about the issuance of our initial order?

Q. Yes. A. No. He remands, thereafter, sometimes for a further hearing or modifies, reverses, that sort of thing.

(118) Q. Let me ask you something about that. I was going to get to it later. A case, as I understand it, if it's a meritorious case, goes to Secretary Lally for his opinion? A. Pursuant to the Statute.

Q. He can reaffirm, reverse or modify? A. Within 15 days.

Q. Have there been any situations that you know of where Secretary Lally has taken any other courses of action besides one of those three things? A. Aside from affirming, reversing or modifying?

Q. Yes. A. Well, it's a legal question. I don't know if it's different than those three or not. That's all — somebody else will decide that, but he every once in a great while remands something for further hearing or

for rewriting of an opinion because it doesn't contain enough facts for him to make an intelligent decision on.

Q. In the cases — go ahead. A. That's about all that comes to mind.

Q. In the case where that happens, is that done (119) formally by him or is it done informally by him? A. Formally. He sends a memorandum covering the order being sent back to us for a rehearing or beefing up, so that he can make an informed, intelligent decision.

Q. Let me try to define formal and informal. As I understand it, under the Statute, Secretary Lally has 15 days within which to review an order of the Grievance Commission? A. That's the way I read it.

Q. And what he has to do, as it reads in the section, within those 15 days is to affirm, reverse or modify. Has there ever come a time when Secretary Lally has not actually signed a formal order with regard to a case that has come to him, but has sent a case back to the Grievance Commission either for a rehearing or to be rewritten without his actual formal order being signed on a case? In other words, just a letter or memorandum? A. Prior to his order being signed, yes.

Q. Prior to his final order being signed? A. Yes.

Q. How often does that occur? (120) A. Maybe a half a dozen times in the last two years.

Q. Half a dozen times total? A. Yes.

Q. As you read the Statute, Mr. Lusby, is that particular procedure provided for in the Statute? A. Not specifically, but as I say, it's for somebody else to decide whether affirm, reverse or modify would include such a procedure. I don't see why it wouldn't.

Q. Such a procedure being a remand or request for rewriting? A. Remand, yes. The word remand is also used in the covering memorandum.

Q. What we're talking about — let me ask you one more question about that, just so we're on the same wave length. The covering memorandum is different from the order that is actually signed by Secretary

Lally, isn't it? A. Oh, it's a memorandum to the Inmate Grievance Commission from Secretary Lally.

Q. It's not his final order, in other words? (121) A. It's not an order at all, no.

Q. And that has happened six times? A. About a half dozen.

Q. After the hearing, Mr. Lusby, and before a decision is made by the Commissioners, and before an opinion is written, have there ever been any cases where information has been gathered and added to the file or added to the record, besides what was gotten at the hearing? A. There have been maybe a dozen instances of that, yes.

Q. And what has that information been? A. Oh, it's almost always different, but it's something pertinent that the Commission wanted either from the inmate or the institution at the time of the hearing and the institution or the inmate promised to send it.

Q. Would an example be an Attorney General's opinion? A. An Attorney General's opinion?

Q. Let me withdraw that question, because that (122) obviously isn't an example because I was asking you about facts, not a legal opinion. You are saying, as I understand it, in a dozen or so cases over the past two years there have been decisions where after the hearing the Grievance Commission has received and considered facts about a case that were not brought to their attention at the hearing? Is that your testimony? A. Amplification or documentation of facts that were brought to their attention during the hearing.

Q. I see. A. That they wanted to see, like medical records, institutional medical records, a letter from an inmate's doctor prior to his incarceration as to what medication he should receive. We had several of those, where an institution doctor disagrees with the guy's doctor when he was on the street, and we have to decide which one we're going to go with.

Q. In these dozen or so occasions, then, could the information fairly be said, this kind of information

we're talking about now, could it fairly be said to be always have been solicited by the Commission as opposed to (123) received unsolicited by the Commission? A. Yes, right.

Q. In every case that has been the situation? A. As far as I can recall. I don't recall any other.

Q. As I read the Statute, Mr. Lusby, the Inmate Grievance Commission after hearing the case can make one of three decisions. It can hold the case partly meritorious, wholly meritorious or totally unmeritorious, is that right? A. Right.

Q. Is there any other possibility? A. No.

Q. And, as I understand it, meritorious cases go to Secretary Lally for his final decision, as we discussed? A. Right.

Q. What papers specifically go to him? A. What papers?

Q. Yes. A. He gets the original of our order and a covering (124) letter from me to the effect of herewith is an order in the captioned matter pursuant to whatever section it is, subsection it is of the Statute. Kindly advise me of your action in this matter.

Q. Has it been your experience that Secretary Lally always acts within 15 days? A. Yes. Usually much sooner.

Q. Does Secretary Lally get any other papers besides the order itself of the Commission? A. No.

Q. In other words, he doesn't get the file in the case? A. No.

Q. And he doesn't get the tape recorded hearing? A. No.

Q. The hearings are tape recorded, is that right? A. Casette.

Q. What does he do with the — what does he do after he has decided on the case? He sends it back to you, or what, or does he contact the institution? Does he contact the Plaintiff? (125) A. He sends the order with his statement saying affirmed, reversed or modified,

and explaining the modifications to the Commissioner of Correction with a covering letter saying, herewith is, and please let me know within 30 days in writing what specific measures have been taken to comply with the order. A photocopy of that is sent to us and then distributed to everybody who is involved.

Q. I believe the last time you testified in the McCray case, Mr. Lusby, you said something about the — let me ask you a preliminary question to that. The institution people that Mr. Lally sends the order to, does that go to the Warden? Does it go to the Defendant, the Commissioner— A. It goes to the Commissioner of Correction in order, as I understand it, that he can inform all of the institutions of precedent that is being set and rules that are being made by the Inmate Grievance Commission.

Q. So every ruling that is favorable to an inmate that comes from Secretary Lally goes to Jordan and then Jordan disseminates it— (126) A. To the various institutions, all the institutions.

Q. Including the particular Defendant, the institution. A. Yes.

Q. They don't get it directly from you— A. They do get a copy from us, but it's got to be a duplicate, because I know that Jordan is also sending them up, but I am not going to take that chance. They are going to get a copy from us, too.

Q. The last time you testified in the McCray case, Mr. Lusby, you said something about there being a three-day period when the order is sent to the Commissioner, but not sent to the inmate. I'm not phrasing it properly, but do you know what I'm referring to? A. The time delay set—

Q. Explain what that is and what the purpose of it is. A. The Secretary initially was sending the meritorious orders at the same time to the inmate and the Commissioner of Correction and that was creating difficulties with them, some of the institutions, because (127) the inmate was receiving his copy of the meritorious order instructing corrective action to be

taken or appropriate relief to be granted and such things were happening as it was being posted on the bulletin board and just disrupting the institution, and this was before the Warden and the people at the institution even knew it, because it takes a few days to filter through the process at the Division of Correction from the Commissioner's office and to the people in there who, it is my understanding, he has a staff of three or four who work on Inamte Grievance Commission matters and the Warden, for example of the Penitentiary, and from the Warden, for example, to Major Mills, who is the liaison man now. Now he sends it three days later to the inmate and to the Commissioner of Correction, in order that both of the immediate parties, the litigants, if you wish to call them that, be informed at the same time.

Q. That's what I was going to say. The purpose of the three-day procedure is so that the two people who are closely involved in the case will find out about it at approximately the same time? (128) A. Right.

Q. And it takes into consideration the time lag necessary to have the order filter down from the Commissioner into the institution, is that right? A. That's right.

Q. In addition to the reviewing of the decisions of the Commission, does Secretary Lally have any other typical involvement with the Grievance Commission? For example, does he come to staff meetings or does he hold staff meetings? Does he send you down policy memoranda? Does he have any other involvement? A. I attend all the agency head meetings of the Department of Public Safety and Correctional Services, of which he is the Secretary, and I am in contact with him or the staff on a daily basis on all matters relating to the running of the agency.

Q. All right, just a few other questions, Mr. Lusby. One of the items that we asked you to bring with you to the deposition today were the cases of the Inmate Grievance Commission that were appealed to the courts, which is provided for under the Statute, and I'm wondering (129) if you could quickly tell us the

number of Inmate Grievance Commission cases, the name of the Plaintiff or Appellant in each of those cases and exactly what the disposition has been of the Court in appeal and, if any are pending presently, you could tell us which ones are pending? A. Just one second. I've got a list.

Q. All right, sir. We don't need a great deal of detail on these. As far as the disposition, if you could just state whether the court affirmed, reversed, remanded. A. Name and our number?

Q. Yes. A. You want to know if they were reversed or remanded?

Q. Or modified, whatever the court did, or affirmed.

(Disscussion held off the record.)

(Mr. Morgan) Let's take a short lunch break.

(Luncheon recess.)

(130) (Mr. Morgan) We're back on the record now, Mr. Lusby, and I believe where we were in the deposition was you were going to give me some information about some appeals that have been taken to court in Inmate Greivance Commission decisions. Before we get into that, there was something that occurred to me over the lunch break about something I was asking you about before that I would like to ask a couple of other questions about.

Q. You testified that when a grievance is found to have merit, it goes to Secretary Lally and Secretary Lally has the choice of doing one or two or three or four things with it. Assuming he affirms the grievance, the question is how does the inmate find out about his disposition? Does Secretary Lally send the inmate the affirmed answer or does the Grievance Commission send the inmate the affirmed answer? A. The Secretary does.

Q. The Secretary does? A. Yes.

Q. Suppose the Secretary modifies or reverses? He still would? A. Yes.

(131) Q. So after the Secretary makes a decision then on a grievance, he sends Mr. Jordan something, he

sends the inmate something, he sends you something? A. That's it.

Q. And that's it? A. Yes.

Q. All right. A. We make any further distribution that is required.

Q. All right. Now, he sends the papers to Mr. Jordan and to you the same day, as I understand it, is that right, and he sends the paper to the inmate three days later, is that right? A. Right.

Q. How long has it been that the three-day rule, if I may refer to it as that, has been in effect, do you remember? A. A long time.

Q. Since before you came or after you came? A. Afterwards, but its been in effect about a year and a half, I'd say.

Q. Whose rule is that? Is that your rule or (132) Secretary Lally's rule? Who decided to have that, do you remember? A. I remember the problem being — the matter being discussed and — I'm really not clear on something that happened a year and a half ago like this.

Q. Who was the discussion with? A. I think the Secretary asked me what I thought about that procedure and my reply was I couldn't see anything wrong with it.

Q. Well, is it fair to say that you and he were having a discussion about this problem you talked about before? A. It was specifically about that. Maybe he phoned me or something and said — as I remember, as is usually the case with most things, one specific thing precipitates it and I think at one of the institutions one of the inmates had been running around waving an order at all the guards' faces and so forth, about, "Look how I gave it to you," and it was disturbing everybody, if the situation existed, if the Warden on down to the correctional officer didn't know such an order (133) existed, and we said what if we staggered the mailing by three days, or maybe I suggested it. I don't know which.

Q. But that conversation you had with Mr. Lally was precipitated by that incident, is that right? A. Or some such incident, as I recall it.

Q. And the decision to put the three-day rule into effect was made either by you or Mr. Lally during that conversation? A. No, I think it was made by both of us by agreement.

Q. But nobody else — it was one of you two? A. It was by the two of us, yes.

Q. Together? A. As I recall it, yes.

Q. Let's get, if we can, to the cases that have been appealed and the question is the same with regard to each of them. What is the name of the inmate, the Inmate Grievance Commission number, and what was the disposition of case on appeal or is it pending presently? A. All right. The following appeals are pending, so there is no court decision. Walter Noble, IGC (134) No. 1365, Aaron Holsey, Nos. 1494 and 1767, James J. Owens — now, I know he's got two in, 1539 and 1570, Robert James, 1538, Doris Dyson, 1555, Clevon Tilghman, 1669, Linwood Nilsen, 1838, Garcia Wright, 1878, Charles Creighton, 1925, H. Manford Fix, Jr., 2147, Arthur Middleton, 1444, Charles Smith, 1556.

Now, the following, we have had decisions: Frederick Switzer, 1183, affirmed, Charles Allen, 1173, affirmed, Franklin Lee Minor, 1191, affirmed, James M. Jourdan, 1041, reversed, Kilgoe, Boston and Matthews, 1191, 1195, affirmed, James M. Neam, 1240, affirmed, Larry White, 1662, reversed, John Jackson, 1528, affirmed, Thomas E. Saul, 1680, affirmed.

There have been two appeals from orders of the Secretary. Are you interested in those?

Q. Please, yes. A. You know, that would be where obviously, since only the inmate can appeal, that would be where the Secretary reversed it, the Inmate Appeal Commission and then the Secretary reversing us, and they have both been disposed of. John H.X. Washington, 1327, the Secretary's (135) order was reversed, Robert Faulks, 1474, the Secretary's order was reversed.

(Mr. Morgan) Off the record.

(Discussion held off the record.)

(Mr. Morgan) Let the record show that while we were off the record, I asked Mr. Lusby a couple of qualifying questions about the information that he had just given us concerning appeals that are apparently pending — appeals that were listed by him just now as pending. It appears that a certain number of those are on remand before the Inmate Grievance Commission and a final decision hasn't been issued by the Grievance Commission on the complaint, but the court involved has made a decision.

Q. Now, my question to Mr. Lusby is, of those cases which were listed as pending by you just now, which of those has there been a decision by the court? A. Walter Noble was remanded to the Commission for the making of a transcript. The reason for that was under the initial Statute, until it was amended in the '73 legislature, the recording of the Commission's (136) hearing sessions was not required, it was discretionary, and some sessions were recorded, some were not; but any that were appealed, it turned out the court always wanted a transcript. Now there is no difficulty about that. There was at that time. Walter Noble—

Q. That was Noble you just spoke about. A. Arthur Middleton, Frederick Switzer, Franklin Lee Minor. I believe that's all. In addition, Linwood Nilsen has been remanded for the Commission to conduct a further hearing on two issues involved in the appeal. So it is still on appeal. The others have been terminated or pending, as earlier indicated.

Q. Just so we're straight then, of the ones you listed before as pending, there are five which the courts have issued orders remanding to the Commission? A. For the making of a transcript, except for Nilsen.

Q. Middleton, Switzer, Minor and Noble were all remanded for transcript? A. Right.

Q. And Nilsen was remanded for rehearing? (137) A. On two issues, right.

Q. And there have been no other remands, is that right? A. Not that I recall.

Q. All right. You are having a copy made of that sheet of paper you were reading off of, is that right? I think if Mr. Stutman has no objection, we'll put that in as Exhibit No. 5, when it returns from the Xerox machine.

(Paper showing appeals pending, appeals terminated, and appealed Secretary's order, dated February 27, 1974, was then marked as Plaintiff's Deposition No. 5.)

Q. Mr. Lusby, when you testified in the McCray case, there were some questions asked by both parties, I think, concerning the availability to a litigant before the Inmate Grievance Commission to litigate in the nature of a class action, and I believe your testimony was, and you can correct me if I'm wrong, that there is nothing specific in the Statute or in the regulations about a class action before the Grievance (138) Commission, but that, in effect, Grievance Commission decisions, if affirmative in favor of the inmate, could have the effect of granting class relief? A. No question.

Q. Is that a fair statement of class action under the Grievance Commission? A. Yes. Also, it's not — well, it sometimes happens an inmate files a complaint on behalf of himself and all others who — I'll say something like we're in the same boat, meaning all others similarly situated like somebody segregated in the south wing of the Penitentiary, about conditions in the south wing, we treat that in the nature of a class action.

Q. When you get that kind of a complaint, when you get one that doesn't specifically say, I'm filing on behalf of others, but one that would appear to affect others were there to be a favorable decision, does the Grievance Commission notify those other people who may be potentially affected by the decision? A. Not unless it would be coincidentally.

Q. Is there— (139) A. Such as they were requested as a witness, or something like that.

Q. Is there any procedure that the Grievance Commission typically uses in these kind of cases for getting by what would be something in the nature of intervention of those other people into the case? A. I'm sorry, you lost me.

Q. Well, assuming a case comes before the Grievance Commission that is brought by a single or one or two people, either on behalf of others or one in which the Commission is aware that a favorable decision would affect others, you testified, I believe, that those others, in either one of those two situations, are not specifically notified by the Commission that this hearing is taking place and that it may affect them. A. Right.

Q. What I am asking now is kind of a sub-question under that. Does the Grievance Commission do anything about making sure that those people intervene in the case in anyway at all? A. No.

(140) Q. What does the Grievance Commission do in order, if anything, what does it do, if anything, to protect whatever rights those other people may have as a result of this particular claim being litigated by a representative person? A. Once again, I don't understand.

Q. Well, let me withdraw that. Maybe we're talking about abstractions. Have you, as the Executive Director, or any other person in the Grievance Commission that you know about, received complaints either in the nature of a formal grievance or just a letter of complaint by people in institutions, any of the institutions, who have been affected by a favorable ruling of the Commission but who is dissatisfied with that ruling? A. Yes, one time.

Q. When was that and what situation was that? A. MCI. Can we go off the record a second to get the specific stuff?

Q. Yes.

(Discussion held off the record.)

(Mr. Morgan) Let the record show that we're waiting (141) for Mr. Wolf to find the case that we were

talking about with regard to my last question and, in the meantime, I'll ask Mr. Lusby a couple of other questions.

Q. As I understand the Statute, and correct me if I'm wrong, only meritorious recommendations of the Commission go to Secretary Lally for his action, is that correct? A. Yes.

Q. Only meritorious findings by the Commission? A. Right.

Q. When an order of the Commission goes to Secretary Lally, I believe you testified in the McCray case that it went in the form of a recommendation, is that right? A. No, it goes in the form of an order which amounts to a recommendation because it's subject to his action. It does not become what I would call an order in the context that I think of an order, with my 15 or 16 years as a lawyer, until he affirms, modifies or reverses. So it's tantamount to a recommendation, but it is the Commission.

(1442) Q. It's the Commission's order, but it doesn't have the power to cause anybody to do anything until the Secretary puts his stamp of approval on it? A. Right.

Q. After that happens, after the Secretary reviews an order and either — well, after the Secretary reviews an order and finds that it does have merit and approves it, does the Inmate Grievance Commission have any further responsibility for the enforcement of that order after that? A. I don't know if you mean statutory or jurisdictional authority? We do—

Q. Let's start statutorily. A. We do enforce.

Q. How do you do that? That's what I'm interested in finding out. A. Whether we've undertaken it ourselves or whether or not it was intended, I don't know. We have assumed it.

Q. In what kind of situations? Can you give an example of when you have had to enforce an order and (143) what you did to enforce it? A. Oh, there have been occasional — it's rare that the institution

does not comply. They comply, but sometimes they will be slow in holding a classification hearing that we ordered. An inmate will write me and say, I haven't had the hearing that was ordered three weeks ago, and I'll call up and ask what the story is and then it gets scheduled and it's held. Compliance is self-policing because the inmates get a copy of the order and if — let's put it this way. If he does not consider the order to have been complied with, he lets me know about it.

Q. On how many occasions would you say you received notice from an inmate that an order he received from the Secretary has not been complied with? A. No more than a half dozen, and usually, that's tardiness. Usually, that's just tardiness.

Q. And your normal response to that is to call the institution and ask what is going on? A. Or write.

Q. Or write? (144) A. I usually just pick up the phone. Something like that I can accomplish by picking up the phone.

Q. Have you ever taken up one of those six occasions with Secretary Lally? Have you ever talked to Secretary Lally— A. About a non-compliance situation?

Q. Right. A. Only the procedure that ought to be adopted. I suggested sometime ago that the Statute be amended to provide that the institution or the Commissioner of Correction notify the Secretary or the Commission, and/or the Commission, within 30 days in writing specifically what measures have been taken to comply with the order, and the Secretary on the advise of Jack Lenz, who is Assistant Attorney General, decided that it could be accomplished rather than by amending the Statute administratively by just including that in his covering letter to the Commissioner, which he has done ever since.

Q. He gives the Commissioner 30 days within which to comply and inform him— A. Right.

(145) Q. Do you receive copies of the letter that comes back from the Commissioner to the Secretary? A. Yes.

Q. Is it your experience that those letters do come back within 30 days? A. Yes.

Q. I think probably by exclusion, you have already answered this question, but on these occasions when you receive complaints from inmates that there has not been compliance with an order, I take it it is not your practice to initiate that as a new grievance? A. No.

Q. You deal with it as compliance with the old grievance? A. It's the same grievance.

Q. And I think your testimony is, let me ask you again to be sure, in none of those — on none of those six occasions have you taken up the specific matter of non-compliance with Secretary Lally? A. No.

Q. You have only talked to Secretary Lally about (146) the general problem? A. The general procedure, right.

Q. The general procedure.

Now, do we have that information? What we're doing now, Mr. Lusby, is going back to the question that I asked you before concerning an inmate who designates himself or purports to be a spokesman for other inmates, but in fact turns out not to be and your testimony was that you knew of one example where inmates who had been affected by a favorable decision granted to one inmate objected to it? A. There has only been one. James B. Jones, No. 1912. He complained that he was being dehumanized by the "Urination call" procedure which gave inmates only two opportunities per night, and he also complained of other things, among which was — well, none of the others are pertinent. None of the others are pertinent. Our order issued on November 2, finding the complaint to be meritorious, and about six weeks later I began getting correspondence from inmates to the effect that despite the fact that he had said that he was speaking for everybody, ***

* * * * * *

PLAINTIFF'S DEP. EXHIBIT NO 2
(Filed February 28, 1974)

Mr. Dene L. Lusby
Executive Director
Inmate Grievance Commission
Executive Plaza One, Suite 402
Hunt Valley, Maryland (21031)

February 23, 1974

Dear Mr. Lusby:

In regards to your letter dated February 19, 1974, I compile the enclosure and hope the following can clarify my full intentions of presenting the following allegations against the "Administration Staff and Correctional Officers" employed at the Patuxent Institution, at present.

At this date, I represent myself in propria personam — however, my attorney is aware of my action and may foreward his assistance as an attorney. If this be so, I will accept his professional ability and advise you, as the same — I am only a tyro.

My allegations are as follows, and they are in accordance with Supreme Court Rulings and my Constitutional Rights, which, have and/are being denied me, as of this date.

Yours Truly,

LEO JOHN RITES
Box 700
Jessups, Md.
(20794)

cc:
MR. JOHN FRANCOMANO, Esq.
116 W. Mulberry St.
Baltimore, Md. 21201

"Allegations"

(1) In accordance with Bundy v. Cannon, 323 F. Supp. 165 (D. Md. 1971) I am allowed to bring my "own attorney" to any disciplinary hearing which envolves me, in an infraction. This was denied me, and my attorney requested his presencen which, was denied him.

(2) I am denied "No Censorship of Outgoing Mail" in accordance with Guajardo v. McAdams, 349 F. Supp. 211 (S.D. Texas 1972) I am to mail my letters without censorship — which, is being denied me.

(3) In accordance with Wright v. McMann, 460 F.2d 126 (2nd Cir. 1972) "No punishment disproportionate to the offense (and therefore "cruel and unusual"). I was put into a cell with no bed, blanket, sheet — just a "sink and toilet" and I had "all clothes" taken from me.

(4) In accordance with Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971). I am allowed "decent conditions in solitary confinement, which, was denied me.

(5) In accordance with Gates v. Collier, 349 F. Supp. 881 (N.D. Miss. 1972). I am allowed "decent conditions throughout prison (living conditions, medical care, rehabilitation programs, protection from attack by other inmates, etc.). I am being denied proper and sufficient medical care, I am being denied entrance into rehabilitation programs, and certain decent living conditions are denied me.

Sir:

The above clearly and briefly discloses my allegations. If and when you, schedule me, for a "Hearing" before the Honorable Inmate Grievance Commission — in full detail, I will explain and prove beyond all reasonable doubt my rights are violated and certain aspects of discrimination and prejudice are shown me, because, I am a Non-Committed Man at Patuxent Institution.

I want the following employees of the Patuxent Institution at my Hearing: Mr. F. Calhoun, Supt., The Dentist and Medical Doctor, Lt. Thomas (4-12 shift) Officer Gee (8-4 shift) Dr. Barrance, Capt. Kenny (8-4 shift) Mr. Jordon (clothing room officer).

I want the following inmate(s) Victor L. McClenden (F-2 Tier) Freddy Jones (F-2 Tier).

I also request my attorney receive a copy of any/and all letters wrote me, in regard to this letter? Thanking you, very much, I am

Yours Truly,

LEO J. RITES

cc: JOHN FRANCOMANO, Esq.

PLAINTIFF'S DEP. EXHIBIT NO. 3

INMATE GRIEVANCE COMMISSION

Information to Inmates

The Inmate Grievance Commission, created by Acts of 1971 by the Maryland Legislature, will review any grievance or complaint by any person in the custody of the Commissioner of Corrections or confined in the Patuxent Institution *against any officials or employees of the Division of Correction or the Patuxent Institution.*

The Commission is a separate agency within the Department of Public Safety and Correctional Services. It is made up of five Commissioners appointed by the Governor. The Commission also has an Executive Director, Dene L. Lusby.

The Commission cannot review complaints concerning parole or probation nor can the Commission review a person's trial or conviction. It should also be understood that the Commission cannot handle *requests*, such as requests for transfer, reclassification, early release. Requests should first be sent to the appropriate person in the institution. Then, if the denial is clearly unfair, a complaint may be filed with this Commission. If the complaint or grievance arises out of a disciplinary action within the institution, all adjustment procedures, including review by the Warden, must first be completed.

Here is how to file a complaint. A complaint may be filed in letter form, specifying exactly and briefly the

nature of the complaint or grievance. The complaint or grievance should include the following:

a. Date.
b. Name, number and present address of person making complaint.
c. Classification status (Max., Med., Min.) or Tier level.
d. The nature of the grievance or complaint.
e. The person or persons responsible for the act or condition complained of.
f. The *facts* or evidence on which the complaint is based. Give *dates*, *times*, and *names* of any persons involved.
g. Names and addresses of witnesses desired by the complainant.
h. The name of counsel, lawyer, friend or relative, if any, who will appear at the hearing.

The complaint should be placed in a sealed envelope and mailed to:

Inmate Grievance Commission
Suite 402, Executive Plaza One
Hunt Valley, Maryland 21031

The Commission will acknowledge the complaint, give it consideration and take whatever action is appropriate as soon as possible.

A preliminary review of the complaint will be made by the Commission or the Executive Director to determine if there is any merit to the complaint if the facts are found to be true. If the complaint has no merit on its face, it may then be dismissed without a hearing. If the complaint or grievance has merit on its face, the Commission may hold a hearing on the matter if desired by the inmate.

The Executive Director, or a Commissioner or staff member, may make an investigation of the problem, including requests for copies of records, interviews with inmates or correctional officers or other personnel involved. The purpose of the investigation is simply to

determine whether or not there is disagreement regarding the facts and whether the problem can be easily and fairly resolved.

Hearings will be held at the institutions at the earliest convenient time. The hearings will be only as formal as may be necessary to protect everyone's rights and to make possible a fair decision. This Commission is not a court of law and there are few rigid rules or procedures.

The inmate, at his expense, may be represented by a lawyer or another inmate, and the inmate (or the lawyer) has the right to question or cross-examine any witness who testifies. Of course all witnesses may be questioned by the Commission, and the Commission may determine the extent of the examination. A verbatim record will be made of the hearing, and witnesses may be questioned under oath. However, there are no strict rules of evidence to be followed.

The inmate and the Commission are also entitled to have access to records and documentary evidence related to the grievance, with the approval of the Secretary of the Department of Public Safety and Correctional Services; and the Commission may, if necessary, issue a subpoena.

After the hearing, the Commission will deliberate in private and make a decision on the merit of the grievance or complaint. If the complaint is dismissed, the inmate may appeal the appropriate Circuit Court.

If, however, the Commission decides that the grievance or complaint is meritorious in whole or in part, a written order is sent to Colonel Robert J. Lally, Secretary of the Department of Public Safety and Correctional Services. This order will state the Commission's findings and decision and recommendations for solution to the problem. The Secretary may then affirm, reverse, or modify the order and direct any necessary action in the matter.

The Secretary's order is final, however, the inmate may petition the Circuit Court for review of the record of the proceedings.

PLAINTIFF'S DEP. EXHIBIT NO. 4
(Filed 2/28/74)

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
INMATE GRIEVANCE COMMISSION

Your complaint has been scheduled for hearing before the Commission on . At that time you will have an opportunity to appear and present your grievance.

You may call a reasonable number of relevant witnesses if necessary, and you will be allowed to question any witnesses who testify. A representative of the institution will be present.

You have the right to be represented by an attorney of your choosing at your expense or by another inmate if you wish. However, the Commission cannot provide a lawyer for you. If you desire legal representation and cannot afford it, you may wish to apply to the Prisoner Assistance Project of the Legal Aid Bureau, Inc., 341 North Calvert Street, Baltimore, Maryland 21202 and its phone number is 539-5340. The determination as to whether or not to represent you is within its discretion and I suggest that if you are going to contact the Prisoner Assistance Project, you do so as far in advance of the hearing date as possible.

If you wish to call witnesses, please notify this office if you have not already done so. If you wish to request a postponement of your hearing, please do so as far in advance of the hearing date as possible, specifying the reason for such request.

Sincerely,

DENE L. LUSBY,
Executive Director.

PLAINTIFF'S DEP. NO. 5
(Filed 2/28/74)

Appeals Pending

Name	*IGC No.*	*Date IGC Order Issued*	*Date Notice of Appeal Received*	
Noble, Walter	1365	1/29/73	3/2/73	
Holsey, Aaron	1494 & 1767	12/21/73	1/4/74	
Owens, James J.	1530	Adm. Dis.	12/5/73	
James, Robert	1538	2/2/73	2/28/73	
Dyson, Doris E.	1553	1/25/73	4/3/73	
Owens, James J.	1570	Adm. Dis.	2/28/73	
Tilghman, Clevon	1669	9/28/73	10/29/73	
Nilsen, Linwood	1838	7/27/73	8/24/73	
Wright, Garcia X.	1878	8/31/73	10/1/73	
Creighton, Charles	1925	Adm. Dis.	1/25/74	
Fix, H. Manford, Jr.	2147	12/10/73	1/3/74	
Middleton, Arthur	1444	11/30/72	1/2/73	
Smith, Charles	1556	1/22/74	2/20/74	

Appeals Terminated

Switzer, Frederick	1183	4/17/72	6/2/72	Aff.
Allen, Charles	1173	4/3/72	5/3/72	Aff.
Minor, Franklin L.	1191	12/12/72	2/19/72	Aff.
Jourdan, James M.	1041	1/27/72	2/10/72	Rev.
Kilgoe, Boston & Matthews	1195	8/2/72	11/9/72	Aff.
Neam, James M.	1240	9/7/72	10/10/72	Aff.
White, Larry	1662	3/16/73	4/17/73	Rev.
Jackson, John	1528	4/2/73	5/3/73	Aff.
Saul, Thomas E.	1680	7/24/73	8/24/73	Aff.

Appealed Secretary's Order

Washington, John X.	1327	12/27/72	2/8/73	
Faulks, Robert	1474	2/8/73	4/5/73	

PLAINTIFF'S DEP. NO. 6
(Filed 2/28/74)

NUMBER OF COMPLAINTS RECEIVED

January 16, 1974

1971		1973	
January	2	January	54
February	1	February	42
March	0	March	44
April	9	April	49
May	7	May	53
June	15	June	62
July	16	July	60
August	24	August	60
September	16	September	56
October	31	October	65
November	30	November	48
December	18	December	45
Total	169	Total	638

1972		1974		
January	17	January	32	(As of 1-16-74)
February	16			
March	29			
April	66			
May	39			
June	38			
July	38			
August	74			
September	47	1971	169	
October	56	1972	510	
November	51	1973	638	
December	39	1974	32	(As of 1-6-74)
Total	510	Total	1349	

PLAINTIFF'S DEP. NO. 7
(Filed 2/28/74)

January 15, 1974

Herewith is the tabulation by categories of the 515 matters heard to date by the Inmate Grievance Commission. The total of 596 is the result of multiple grievances filed by an inmate in one complaint.

Appeals from classification actions	— 97
Appeals from disciplinary actions	— 262
Property theft	— 35
Inadequate medical care	— 37
Assault by correctional officers	— 19
Interference with exercise of religious beliefs	— 7
Racial discrimination	— 14
Denial of commissary privileges	— 5
Lack of reevaluation on segregation	— 1
Interference with visiting privileges	— 6
Interference with mail	— 12
Impropriety of institutional rules	— 35
Harassment by correctional officers	— 24
Institutional records incorrect	— 9
Conditions on South Wing of Penitentiary	— 13
Negligence on part of correctional officers or institutions	— 20
TOTAL	— 596

PLAINTIFF'S DEP. NO. 8A
(Filed 2/28/74)

January 31, 1974

INMATE GRIEVANCE COMMISSION

Total complaints received: 1385

Administrative dismissals: 752
(Lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 533

Cases Open: 100
(To be investigated and/or heard if not withdrawn or informally resolved.)

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Number of Orders issued: 466

Meritorious: 152

Without Merit: 296

Moot: 18

Cases heard and awaiting Orders: 67

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Cases scheduled for hearing: 59

Cases not scheduled for hearing: 41

Cases heard January, 1974: 39

PLAINTIFF'S DEP. NO. 8B

December 31, 1973

INMATE GRIEVANCE COMMISSION

Total complaints received: 1319

Administrative dismissals: 720
(Lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 507

Cases Open: 92
(To be investigated and/or heard if not withdrawn or informally resolved.)

* * * * * *

Number of Orders issued: 449

Meritorious: 145
Without Merit: 287
Moot: 17

Cases heard and awaiting Orders: 67

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Cases scheduled for hearing: 46
Cases not scheduled for hearing: 46
Cases heard December, 1973: 16

PLAINTIFF'S DEP. EXHIBIT NO. 8C

November 30, 1973

INMATE GRIEVANCE COMMISSION

Total complaints received: 1274

Administrative dismissals: 700
(lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 491

Cases Open: 83
(To be investigated and/or heard if not withdrawn or informally resolved.)

* * * * * *

Number of Orders issued: 408

Meritorious: 136
Without Merit: 256
Moot: 16

Cases heard and awaiting Orders: 79

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Cases scheduled for hearing: 28
Cases not scheduled for hearing: 55
Cases heard November, 1973: 24

PLAINTIFF'S DEP. EXHIBIT NO. 8D

October 31, 1973

INMATE GRIEVANCE COMMISSION

Total complaints received: 1226

Administrative dismissals: 662
(lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 477

Cases Open: 87
(To be investigated and/or heard if not withdrawn or informally resolved.)

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Number of Orders issued: 357

Meritorious: 115
Without Merit: 226
Moot: 16

Cases heard and awaiting Orders: 104

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Cases scheduled for hearing: 48
Cases not scheduled for hearing: 39
Cases heard October, 1973: 57

PLAINTIFF'S DEP. EXHIBIT NO. 8E

September 30, 1973

INMATE GRIEVANCE COMMISSION

Total complaints received: 1159

Administrative dismissals: 624
(lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 420

Number of cases open: 115
(To be investigated and/or heard if not withdrawn or informally resolved.)

* * * * * *

Number of Orders issued: 344

Meritorious: 114
Without Merit: 216
Moot: 14

Cases heard and awaiting Orders: 71

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Cases scheduled for hearing: 80
Cases not scheduled for hearing: 35
Cases heard September, 1973: 44

PLAINTIFF' DEP. EXHIBIT NO. 8F
August 31, 1973

INMATE GRIEVANCE COMMISSION

Total complaints received: 1119

Administrative dismissals: 590
(lack of jurisdiction, withdrawals, informally resolved, etc.)

Number of cases heard: 376

Number of cases open: 153
(To be investigated and/or heard if not withdrawn or informally resolved.)

* * * * * *

Number of Orders issued: 331

Meritorious: 113

Without Merit: 205

Moot: 13

Cases heard and awaiting Orders: 42

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Cases scheduled for hearing: 62

Cases not scheduled for hearing: 91

Cases heard August, 1973: 13

PRISONER ASSISTANCE PROJECT
March 19, 1974

Dene L. Lusby, Esq.
Executive Director
Inmate Grievance Commission
Executive Plaza One, Suite 402
Hunt Valley, Maryland 21031

Re: *Washington v. Boslow*,
Civil No. 73-1025-N.

Dear Mr. Lusby:

On February 28, 1974, your deposition was taken in the above-referenced case. At that time, you were asked to produce two (or more) decisions of the Inmate Grievance Commission concerning mail regulations and the conditions of punitive or administrative segregation at Patuxent Institution. There is reference in the deposition to these documents, and the record was left open for their inclusion as Plaintiff's exhibits. It was my understanding that you would supply me with the documents the day of the deposition or shortly thereafter so that they could be forwarded to the reporter.

I would appreciate your sending me the decisions of the Commission to which you referred in your deposition so that they may be included in the record. If upon further research it appears that the decisions do not exist or were never made, please send me a letter to that effect so that the record will be complete.

Thank you for your attention to this matter.

Sincerely,

CHARLES F. MORGAN

CFM/arp
cc: Donald R. Stutman, Esq.

DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES
INMATE GRIEVANCE COMMISSION

March 20, 1974

Charles F. Morgan, Esquire
Legal Aid Bureau, Inc.
Prisoner Assistance Project
341 North Calvert Street
Baltimore, Maryland 21202

Re: *Washington v. Boslow*
Civil No. 73-1025-N.

Dear Mr. Morgan:

In response to your letter of March 19, 1974, herewith are Orders of the Inmate Grievance Commission in the matters of Paul Brown Clark and Bernard E. Railey, Jr. (IGC No. 1033) and Roosevelt Drummond (IGC No. 1992), relating to administrative segregation at Patuxent.

The only complaint I have found relating to mail privileges from a patient at Patuxent is in the matter of Duane A. Carl (IGC No. 1895), in which no order was issued for the reason that the matter was informally resolved by means of modifications in the institution's mail procedures.

Sincerely,

DENE L. LUSBY,
Executive Director.

DLL/jh
Enclosures

cc: Donald R. Stutman, Esquire

STATE OF MARYLAND
INMATE GRIEVANCE COMMISSION

ORDER

In the matter of: Paul Brown Clark and
Bernard E. Railey, Jr., Patuxent Institution

IGC No. 1033

This matter was initiated by a letter of complaint addressed to the Inmate Grievance Commission dated November 24, 1971. The two petitioners complain that:

1. Inmates in protective custody should have privileges of the first level at Patuxent Institution.
2. Inmates should be permitted to keep more than twelve books in their cells at any one time.
3. Inmate Paul Clark should be allowed to take a high school equivalency examination, even though he is in protective custody on M-1.

The petitioner Paul Clark appeared before the Inmate Grievance Commission at a hearing held on May 26, 1972 at the Patuxent Institution, Commissioners Levitt, Williams, Bennett and Fulton participating. The Institution was represented by Mr. Forrest Calhoun, Assistant Superintendent of Patuxent Institution.

The petitioner, Bernard Railey, had previously been released from Patuxent. His complaints are therefore considered moot.

Findings of Fact

Mr. Clark is on protective custody at his own request, because he wants to keep out of trouble. He claims that while in protective custody on M-1 there are no programs for such inmates. He would like the same privileges as the general population enjoys. Mr. Clark has been at Patuxent six years and to date, has refused to be examined by the staff. He remains in diagnostic status; i.e., a "D-man".

Mr. Calhoun confirmed that Mr. Clark is on protective custody at his own request and can come off any time he desires. Mr. Calhoun states that all inmates on

M-1 are treated the same, due to the nature of available facilities and manpower limitations of the Institution.

Mr. Calhoun further stated that Mr. Clark had been involved in disturbances and was placed in administrative segregation; that he has consistently refused to return to the general population of diagnostic patients; that the best interests of this patient are being served and that the Institution cannot grant Mr. Clark special privileges.

Mr. Clark would like to have at least thirty books in his cell at any one time instead of the present twelve he is allowed. He claims it takes approximately one month to get delivery of books requested from the library. He also claims that library privileges are restricted as to protective custody inmates.

Mr. Calhoun stated that the Institution believes twelve books to be adequate. He states books from the outside must come directly from the publisher or a book store in order to be admitted. This means the Institution doesn't have to check for contraband and relevant security factors are minimized. Books received from a patient's family or friends are not allowed into Patuxent Institution.

Mr. Calhoun stated that the Institution does not accept the allegations as to unreasonableness of book delivery time and that in this area there is no discrimination as to patients on M-1 and in protective custody status, even though in D-man status.

Mr. Clark also raised the issue that he is unable to take the high school equivalency test while on protective custody as there are no facilities on the tier for such an exam. Mr. Calhoun states, that while he is in administrative segregation (protective custody), for him to take the test, they would have to assign an officer to Clark for that specific purpose. He can take the test any time he returns to the general population. Mr. Calhoun avers that this is a logical and reasonable rule of the Institution.

Conclusions

The Commission finds Mr. Clark's complaint Number 1 to be without merit. The Patuxent Institution is unable to respond affirmatively to any request for special privileges for inmates on M-1, whether in administrative segregation, protective custody or punitive segregation.

The Commission, likewise, finds no merit to Mr. Clark's second complaint. We believe that the allowance of as many as twelve books in a patient's cell at any one time is reasonable and this limitation should not be disturbed.

As to the third complaint of this petitioner, the Inmate Grievance Commission finds it to have merit to the extent that an opportunity to take the high school equivalency test should be afforded Paul B. Clark. This should be done by appointment coincidental with the availability of security manpower for the relatively short period of time required to complete the test. This should not be unduly burdensome on the Institution and we feel that, in its therapeutic significance, this could contribute in a positive manner to the treatment program at Patuxent, as well as to the welfare (morale) of this patient.

Disposition

Complaints Numbered 1 and 2 are dismissed.

The Commission recommends, on merit, affirmative action by Patuxent in respect of complaint Number 3; i.e., that arrangements be made to allow Paul B. Clark to take the high school equivalence test.

This 2nd day of October, 1972.

JEFFREY LEVITT,
Commissioner

MACEO M. WILLIAMS,
Commissioner

JAMES V. BENNETT,
Commissioner

E. A. FULTON,
Commissioner

DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

The Order of the Inmate Grievance Commission is affirmed.

This 10th day of October, 1972.

ROBERT J. LALLY,
Secretary.

STATE OF MARYLAND
INMATE GRIEVANCE COMMISSION

ORDER

In the matter of: Roosevelt Drummond
C-2195, Patuxent Institution IGC No. 1992

Mr. Drummond filed with the Commission a grievance complaining of indeterminate sentences to administrative segregation, contending that administrative as well as punitive segregation should be for a specific limited time. He also complains of the alleged unhygienic conditions of the cells and the conditions of administrative segregation generally.

The matter was heard at the Patuxent Institution on October 24, 1973 by the full Commission. Mr. Drummond was represented by Charles Edward Clark, Legal Representative of A.C.L.U. of Montgomery County, Maryland. Mr. Forrest Calhoun, Associate Director/Superintendent, represented the institution. Mr. Clark submitted a memorandum which he requested be made a part of the record in this case and in the matter of Randolph Johnson, IGC No. 1977. The memo was accepted by the Commission.

Findings of Fact

Mr. Drummond had been placed on administrative segregation as a result of an incident which occurred on June 30, 1973.

Mr. Calhoun testified that the status of the inmate patient is reviewed at least every thirty days by the

Unit Treatment Team and a memorandum is prepared for the institution.

It is contended that this is a professional determination for the purpose of deciding when the inmate should be released from administrative segregation.

The patient inmate is presumably advised by his therapeutist or another member of the Team, although no record is made of the fact that he is or is not actually informed of the results of such hearings.

Mr. Drummond indicated that he had not been informed of the actions of these Teams or of such reviews.

When questioned as to just what his grievance was, Mr. Drummond indicated that his main complaint was that he should be informed of the results of any hearings or reviews and that if his release had been denied he should be so advised.

At the time of this hearing there were six inmates in administrative segregation and Mr. Drummond indicated that some of the cell conditions of which he complained had been improved but more clean up was necessary in his opinion.

It appears that the cleaning of the hallways is performed by a group of inmates assigned to that work and that the cleaning of the individual cells is the responsibility of the occupant.

Conclusions

There has been no evidence submitted to this Commission to justify any action in respect of the decisions of the staff as to the confinement to administrative segregation in this case or any specific action as to the physical condition of the facilities.

However, it appears that under the present procedures all inmates could be continued in administrative segregation indefinitely without any actual notice or advice to the inmate that his release from that status has ever been considered.

Disposition

The specific grievance of Mr. Drummond is without merit and is dismissed.

The Commission, however, recommends that the records of the institution should affirmatively reflect that the inmate is advised in each instance of the fact that a hearing in his case has been held and that he has been advised of the outcome and result of that hearing.

This 8th day of January 1974.

JAMES G. BOSS,
Chairman

RALPH S. FALCONER,
Commissioner

E. A. FULTON,
Commissioner

MACEO M. WILLIAMS,
Commissioner

DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

The Order of the Inmate Grievance Commission is affirmed.

This 21st day of January, 1974

ROBERT J. LALLY,
Secretary.

(1) *In the United States District Court*
For the District of Maryland

Civil No. 73-1025-M

John Washington,
Plaintiff,

v.

Dr. Harold M. Boslow, et al.,
Defendants.

Deposition of ROBERT J. LALLY, taken on Thursday, February 28, 1974, at 3:15 p.m., at Suiter 500, Executive Plaza One, Hunt Valley, Maryland, before Andrew A. Castiglione, Notary Public.

Appearances:

Charles F. Morgan, Esquire
On behalf of the Plaintiff

Donald R. Stutman, Assistant Attorney General
On behalf of the Defendants

Reported by:
A.A. Castiglione

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(2) STIPULATIONS

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of this deposition by the witness is hereby waived.

It is further stipulated and agreed that the filing of this deposition with the Clerk of Court is hereby waived.

ROBERT J. LALLY,

called for examination by the Plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

By Mr. Morgan:

Q. Colonel Lally, my name is Charles F. Morgan and I'm representing a prisoner at Patuxent Institution whose name is John Washington, and I suppose Mr. Stutman has filled you in on the background of the case, but let me state briefly what the case is about.

Mr. Washington filed a complaint in Federal Court alleging that a doctor at Patuxent Institution had given him inadequate medical treatment and, as a result, (3) he, Washington, suffered a permanent disability and he filed a complaint for damages in the Civil Court, under the Civil Rights Act, and the State has filed a motion to dismiss based primarily on the ground that Washington has never before brought this particular complaint to the attention of the Inmate Grievance Commission and for that reason the Federal Court should dismiss his complaint and require him to exhaust this available State administrative remedy. The Plaintiff, and I on his behalf, is opposing that motion and we're saying in this particular case we should not be required to bring the case before the Inmate Grievance Commission and, in order to adequately oppose the motion to dismiss, it is necessary, and I think Mr. Stutman would agree, to develop some information about how the Inmate Grievance Commission works, and obviously, because you are an integral part of the Inmate Grievance Commission, at least in one part of the function of the Inmate Grievance Commission, this deposition becomes necessary, to ask you what your role is, how you function in connection with the Inmate Grievance Commission and some other things. I think this deposition will probably be (4) very short, and it is directed primarily to the Inmate Grievance Commission.

I think, however, we should start by your stating for the record exactly what your position is, how the Secretary of the Department of Public Safety and Correctional Services relates to the Governor and the Division of Correction, Patuxent Institution and Inmate Grievance Commission. A. My authority stems from Article 41 of the Annotated Code of Maryland. Under that statutory authority, I have been appointed by the Governor as Secretary of Public Safety and Correctional Services.

The Statute specifies the agencies that are comprised within this department. One of those is the Inmate Grievance Commission.

Q. The Division of Correction and Patuxent Institution are also within the department, is that correct? A. That's correct, among others.

Q. All right, sir. In broad terms, what is your role vis a vis the Division of Correction and Patuxent Institution? (5) A. The Statute defines in broad general terms the authority of the Secretary over the various agencies comprising the Department. In general terms, they give authority to the Secretary as to the administration of the respective agencies in the area of budget, planning, approval of appointments, approval of rules and regulations and so forth. The Statute does not provide for the operation of the individual agencies comprising the department. These are spelled out in other areas of the Annotated Code of Maryland giving specific authority to the heads of the respective institutions.

Q. And that role or those functions that you described are your relationship to the Division of Correction and Patuxent and the Inmate Grievance Commission, I assume? A. Yes. Each of the individual heads have their specific authority subject to the control and/or approval of the Secretary.

Q. Now, sir, going to the Grievance Commission specifically, I would like to ask you a few specific questions concerning the extent of your involvement with the operation of the Grievance Commission.

(6) First of all, are you involved in anyway in the day-to-day operation or the day-to-day management of the Commission? A. Not as such, no. I want to emphasize the words day-to-day. Their overall performance, their budgetary necessities, this is over and aside from those complaints that they hear and find meritorious that come to me for final action.

Q. What is the extent of your personal contacts with members of the Commission, either the Commissioners themselves or Mr. Lusby or any of the staff? A. It's purely on an official administrative basis.

Q. In what circumstances and official administrative bases do you come in contact with them? A. Personnel problems, administrative problems, budgetary problems. Initially, of course, in the formation of the rules and regulations of the Commission when it was first started in 1971, but less and less after they once were established. The role now is more in an administrative capacity, insofar as personnel needs, budgetary needs, as we do in any state agency, as we're compelled to do.

(7) Q. Do you have what could loosely be called staff meetings with the Commissioners and Mr. Lusby? A. We have a meeting once a month with all of our agency heads, following the cabinet meeting to convey to them questions of policy, problems of concern of the administration of the State generally. These are then conveyed to the agency heads, including the Director of the Inmate Grievance Commission, Superintendent of the State Police. All of the agency heads are represented at this monthly staff meeting and they will generally follow the day after the cabinet meeting.

Q. So I guess that could be loosely described as a situation where the agency heads come to you for a staff meeting which is directed by you, I assume. Are there any circumstances where you would go to the individual agencies for the purpose of a meeting? A. Oh, yes, there could be.

Q. With the Grievance Commission, does this happen? A. I haven't had any meetings with the Inmate Grievance Commission, I daresay, now, in three or four

months and that was over personnel and budgetary problems.

(8) Q. You mentioned rules and regulations. As far as the Grievance Commission goes, when were the rules that are now in effect adopted? A. Sometime subsequent to the passage of the Act, which was July 1, '71. I would have to guess at this. I daresay the latter part of '71 or early part of '72.

Q. You, I'm sure, are familiar with the provisions of the Maryland Administrative Procedure Act? A. Yes, generally.

Q. I am wondering if the rules and regulations of the Inmate Grievance Commission were promulgated under that act and was the act complied with when— A. No, they were not promulgated under that act. They were promulgated in conformity with that act, I presume. They were promulgated with response to Article 41, Section 204 (F), which gave the statutory authority for the promulgation of the rules of the Commission. They were reviewed by the Attorney General's Office for legal sufficiency.

Q. Is it your opinion, Secretary Lally, that the Inmate Grievance Commission is governed by the provisions (9) of the Administrative Procedure Act? A. In what way?

Q. Well, for example, the Administrative Procedure Act obviously contains a lot of things, but in general, it talks about the procedures that an agency has to go through when it implements rules and regulations, the various procedures it should use when it's dealing with contested cases, the procedures concerning appeals from contested cases. A. I haven't compared it in that light, but I would dare say in a general way that anything in the rules and regulations of the Inmate Grievance Commission would conform and not conflict with the Administrative Procedures Act, unless the enabling legislation, Article 41, 204 (F) specifically said otherwise.

Q. What is your involvement with the Grievance Commission, Secretary Lally, concerning the making of

policy of the Commission? A. I don't make any policy in the Commission, insofar as their rulings on grievances are concerned, except to insure that they don't become involved in what I would (10) term purely legal questions. For example, if an inmate complains that he was eligible for parole or he was not guilty in his original trial, these are purely legal questions that remain in the prerogative of the court. Other than directions such as this, I do not direct the Commission whatsoever in their decisions or their hearings.

Q. Have you ever imposed any kind of restrictions on what the Commission can by subject matter deal with, other than what is in the Statute? A. If you would be more specific, I could—

Q. For example — and I'm not thinking of anything in particular, I am asking a general question, have you ever told the Commission, for example, that as a matter of policy they should not consider cases raised by inmates concerning mistreatment by guards or— A. Never.

Q. Or conditions on a certain tier— A. Never.

Q. Now, I'm not talking about these specifics, but using those as examples— A. In othe. words, have I limited their jurisdiction (11) beyond what the law permits?

Q. I think you are saying it better than I. A. No.

Q. One of the roles that you play, as I understand it from the Statute and from Mr. Lusby, Secretary Lally, is that after reviewing the decisions of the Grievance Commission and, as I understand it, only the ones where the Commission finds the complaint to be meritorious, in favor of the inmate, do you review? A. That's correct.

Q. That's correct? A. I have no statutory authority, if they find on initial review the complaint is not wholly meritorious, they have the authority, either the Commission themselves or they can delegate it to the Executive Director to dismiss it, if they find on initial review that it is not meritorious. My role only begins after the Commission has conducted a hearing and

found that the complaint is in part or wholly meritorious.

Q. What is your role at that time? A. Then I, under the law, must either affirm, (12) modify or reverse the order of the Commission and the Statute specifically also says that I may take whatever other action I deem necessary.

Q. Does the Statute impose any kind of time restriction on you with regard to that? A. Yes. It requires that 15 days after the receipt of the order of the Commission, that I must submit my order.

Q. Is it your habit, Secretary, to act within 15 days? A. Usually, yes, unless some unusual circumstances prevail.

Q. You mentioned you take whatever other action you deem appropriate— A. This is what the Statute says.

Q. Yes, sir, I've got the Statute here and I was going to ask you a direct question about it. The Statute states first that within 15 days of the receipt of such an order, the Secretary by order shall affirm the order of the Commission or shall reverse or modify the order where he disagrees with the findings and the conclusions of the (13) Commission and that's what you testified to? A. Then the next sentence—

Q. The next sentence is the Secretary shall order that the appropriate official of the institution in question accept in whole or in part the recommendation of the Commission, and I assume that you do that? A. Yes.

Q. And then there is an "or," and it says, or the Secretary may take whatever action he deems appropriate in light of the Commission's findings. How do you interpret that particular phrase, take whatever action he deems appropriate in light of the Commission's findings, and under what circumstances have you used that phrase to take action and what action have you taken? A. Well, generally, the way I apply that is to write my opinions or my orders in conformity with that language. In other words, if the Commission should

make an erroneous decision, then as I read the law, it's up to me to reverse, modify or affirm the order.

Q. What I am directing my question to now, however, is the second sentence and it seems to be — the Statute (14) seems to read that within 15 days of receiving such an order, the Secretary has to do one of those three things, reverse, modify or affirm? A. Hypothetically, let us say the order imposed upon a correctional agency an action that was either legally impossible or fiscally impossible for them to implement—

Q. Fiscally? A. F-i-s-c-a-l-l-y, or legally impossible for them to comply with, in other words, if the law says Patuxent must do so and so, and the Inmate Grievance Commission order is contrary to that or if the fiscal restraints of the budget which was passed by our legislature and provides X-number of dollars and there is something in conflict with that, this is when I would have to invoke whatever action I deem necessary.

Q. What action would that be, in that circumstance? A. It could be as broad as your imagination.

Q. Wouldn't it be limited to either reversing or modifying the order of the Commission? (15) A. Usually, yes, but there could be exceptions.

Q. What exceptions specifically are you thinking of? A. I don't have any in mind, but I visualize that there might be some.

Q. Well, let me ask you one other question about that phrase. A. I can give you a hypothetical situation. Suppose they should order that they provide a swimming pool, and if I knew the budget didn't provide for fiscal funds to build a swimming pool, I think I would have to disagree with it.

Q. And you would reverse it? A. If that were the order and I knew it was fiscally impossible, I think I would have to reverse it.

Q. So that really isn't an example that fits into the category of take whatever action you deem appropriate, because that's a reversal. That is one of the things that

is enumerated. That is what I'm getting at. What falls into the category of things you would do besides affirming, reversing or modifying? A. I think only in those areas where, from my knowledge of the capability of the agency involved, whether (16) it is Patuxent or Corrections, that I would know it couldn't be accomplished within a certain time — let us say, for example, it involved training of correctional officers, and I know the training cannot be given until, say next September and assuming the order says it had to be done for forthwith, something of that type, I would have to take whatever action is necessary and modify the order.

Q. I see. A. There are a host of things that are knowledgeable to me as Secretary affecting our agencies that the Inmate Grievance Commission itself is not aware of. So that I think that this phrase is meant for that purpose.

Q. When you review a decision of the Commission, Secretary, what papers do you actually have before you? A. I have the order of the Commission which includes the findings of fact, conclusions, in effect, the Inmate Grievance Commission order.

Q. Do you typically have the tape recording of the hearing? A. No.

Q. Have you ever had opportunity to ask for one? (17) A. No.

Q. Do you typically have the whole file from the Commission? A. No, never. However, there are occasions where the findings of fact or the statements contained in the order are so meager, that I have sent them back for a rehearing.

Q. Is that one of the things — well, when you send a case back for a rehearing, do you sign a formal order and say, I hereby reverse or modify to the extent of holding a rehearing, or do you just send an informal kind of— A. No, that would be done administratively, like going to the Director and saying there aren't enough facts to decide the thing and expand on it.

Q. And you would ask them to hold another hearing? A. Either hold another hearing or extend the hearing or obtain the facts that I may need.

Q. Would you ask them then to rewrite the order? A. No.

Q. Well, wouldn't the purpose of it be so — wouldn't the purpose of the hearing be to have the order (18) rewritten so it would be in a form that you could rule on? A. No. The purpose — the only purpose I've ever had, and I can only think of one or two occasions where this happened, where the facts were so meager, you couldn't make a decision. In effect, it would be a remand by modification.

Q. Yes, I see that. Then that would fall into, "or take whatever action you deem appropriate," I guess? A. Yes. This could work either way, either in favor of the institution or in favor of the inmate.

Q. Certainly. If you ask that a case be remanded, the Grievance Commission, would they hold another hearing? A. I would presume they would.

Q. And, after the hearing they would write another order, wouldn't they? A. It wouldn't necessarily change the order. They would add to the findings of fact, I would hope so, so I could make a decision.

Q. I think we're talking about the same thing, but talking— A. In the order there is a set of conclusions which (19) in effect is an order. The findings of fact are a recital of what they found in the hearing.

Q. What you are saying is the disposition could be the same, but the second time it comes to you, there would be a longer set of facts and you could rule on the disposition? A. Yes.

Q. Has there ever been an occasion when you sent an opinion back to the Grievance Commission and asked them not necessarily to gather new facts about the case, but to rewrite the opinion because you don't feel that the opinion — you don't feel that the disposition matches the facts? A. I can't recall any. It's conceivable that this might have happened in the very early

stages of the Commission when they were very inexperienced with the statutory requirements. However, I don't recall even then, but it could have happened. I couldn't say unequivocally.

Q. During the course of time that you have a case before you for review, has there ever been an occasion when you consulted with either Mr. Lusby or any member of the Commission about the case? (20) A. A particular case?

Q. A particular case. A. Not to my recollection. Wait a minute. There was one over the claw, the use of the claws, and I may have talked to him about that. It's a restraining device they used in Corrections some months back, which was heard by the Grievance Commission.

Q. In that particular case, after their order came to you for review, you talked to Commission members about it? A. That's the only case that I can recall. I'm not even positive about that.

Q. But, just in that one case, at the outside? A. This is the only one that comes to mind.

Q. Secretary Lally, what standards do you use when you are reviewing a decision of the Commission? A. What standards?

Q. Yes, sir. A. I think I call upon my own legal knowledge and legal training, my own professional training, my own administrative knowledge of the agencies that comprise this (21) department. That generally is what — is that what you have in mind?

Q. I think so, yes, guidelines or standards that you use. I assume none of those are written down anywhere? A. No, not unless you extract them from my brain.

Q. Have you ever delegated the authority to review an order to someone under you? A. Yes, for a short period of time I had two deputy secretaries. One is the Deputy Secretary for Correctional Services, the other is Deputy Secretary for Public Safety. For a short period of time, I had a Deputy Secretary of Correctional

Services, preliminary reviewing the Inmate Grievance Commission orders, but that was, I daresay, no more than a two-month period. Except for that period, I do it all myself personally. I don't staff it out to anyone.

Q. And your present policy and future policy is to do it all yourself? A. It would depend on the time and availability of the new Deputy Secretary for Correctional Services. I can't say at this point in time whether he would or wouldn't, (22) but the statutory authority is mine, not his.

Q. Is it your practice, Secretary Lally, before issuing what would be the final order in the case, your order, have you ever issued a proposed order to both parties, either/or both parties, for their comment and then issue your final order? A. I have never issued a proposed order. I draft my order and send it to the Division of Corrections, as a matter of policy, or it could be Patuxent, for that matter, because those are the only two agencies that are involved under the Inmate Grievance Commission Act. As a matter of policy, I send it to the head of the Division of Corrections or Patuxent, giving them a two or three day period to respond to it, before I issue the final order.

Q. Is what they receive at that time a signed order by you or a proposed order? A. It's a draft, I would say, of what I intend to make as my one and only final order.

Q. It's a draft of a final order and is it signed by you? A. It could be.

(23) Q. Well, is it usually, or does that vary? What is your practice on that? A. I'd say, with the volume that comes across here, most of them are probably signed.

Q. And what happens at the end of the three-day period, if, for example, either the Commissioner of Corrections or Director of Patuxent has not communicated with you about the order, what happens then? A. Then it becomes final. The agency then has 30 days to respond to me, advising me what action they have taken in response to the order.

Q. Thirty days to advise you of their compliance, in other words? A. That's correct.

Q. At the end of the three-day period, I assume at the end of the three-day period, the inmate or whoever is the complaining person would get a copy of your order, is that right? A. As soon as the order is finalized, the inmate under the law is given a copy by mail.

Q. Is the inmate given a copy at the same time the (24) Commissioner or the Director of Patuxent is given a copy? A. When there is a draft copy, no. The only time an inmate gets a copy is when the order is final.

Q. Is there a draft copy issued in every case? A. Yes.

Q. And that draft copy doesn't become final until three days after it's signed, is that right? A. As a matter of practice. There could be some exceptions to this.

Q. And, on the third day, the inmate gets a copy of it, because at that point the draft copy becomes a final copy? A. No. The third day the copy would be mailed to the inmate. I don't know whether he would get it—

Q. He would get it in four days or five days. Is that done in your office or is it done out of your office? A. It's done out of my office.

Q. What happens, Secretary Lally, if a comment comes back from the Division of Correction or Patuxent after the three-day period taking some objection to your ruling, which by that time has become final? What is your (25) practice then? A. I would weigh whatever they had to say and take it into account when I drafted the final order.

Q. Well, at that point the order would be final, as I understand your testimony. A. No. I said it's a matter of practice.

Q. Yes. A. You asked what would happen if it was after three days.

Q. Right. A. This could be an exception to the practice or it could be within the three days, for that matter.

Q. What practice are you referring to? A. My practice is to send a draft copy of the inmate grievance

order that I intend to write to the involved agency, Patuxent or the Division of Corrections, and I say, as a matter of practice, I give them three days to respond, but there could be exceptions to that general practice.

Q. What would be the exceptions? That they would be given more time to respond? A. Anything could happen, or the Commissioner (26) himself may be ill, he might be involved in a riot. I can envision all sorts of circumstances where they may not be able to respond. They may call me and say, the three days are up, I haven't had a chance to get to it, I'll get it in as soon as I can.

Q. I think the problem I'm having in understanding the practice, and let me ask you a question and maybe it will be cleared up. I am not sure at what point an order becomes final. As I read the Statute— A. I think it should be made clear that there is not a combination of orders. There is one order in each and every Inmate Grievance Commission consideration.

Q. Which is that? A. The one order that is finally released.

Q. That's the final order? A. That's right.

Q. Is it your interpretation of the Statute that the final order has to be issued within 15 days of the time you receive the Grievance Commission's recommendation? A. That's what the law says, yes.

Q. Okay. And you said it was your practice to (27) comply with the law and, in most cases, I think you said almost all cases, the final order is issued by you within 15 days? A. Usually.

Q. Right. Now, my question is if you send what you call a draft order to either Mr. Jordan or Dr. Boslow and ask for their comments on the order, when does that order become final? When does it become the final order? A. At the time I mail it to the inmate.

Q. And that would be three days after? A. Usually.

Q. Usually three days after. What is the purpose of that three-day period, Secretary Lally? A. I don't pretend to know all of the problems of the institution

and I have often found in the findings of fact that the person representing the institution is not always knowledgeable of the total problems of the institution, and I don't have sufficient facts to make a final decision on it.

Q. And so that three-day period is for what? A. Looking for sufficient facts upon which I could (28) make an intelligent decision on the order.

Q. Okay. Suppose, in a hypothetical case, you send a draft order to either Mr. Jordan or Dr. Boslow and say within the three-day period either one of those people calls you on the phone or sends you a letter and says, I think that your proposed draft — I think your proposed order is wrong because the facts as I see them are thus and so, and your conclusion therefore should be this, rather than that. What would you do with that response? A. I would weigh it.

Q. Against what? A. Against the facts in the order.

Q. And if you found that the response you got back from Mr. Jordan or Dr. Boslow outweighed what the finding of the Commission was, then that would be reflected in your final order? A. In this hypothetical situation, it might be necessary to remand it to the Commission for the taking of testimony on the particular point raised by the agency head.

Q. Would you always remand it or not? (29) A. It would depend on what issue was raised.

Q. Well, why don't we talk specifically about the case that I think probably you have some knowledge about already and that's the Curtis Midgett case, which I think Mr. Frankel asked you to submit an affidavit to the court, in the Ernest Minnick case, and in that particular case, if I may represent to you what I believe the facts to be, on March 21, 1973, you sent a letter to Mr. Jordan saying, "Enclosed is a copy of the order resulting from Inmate Grievance Commission's hearing of the complaints of Midgett, Minnick, and Minnick. They will be sent a copy of this order in three days. Let me know in writing within 30 days what specific action has been taken in compliance with this order," and this

letter is what you testified today, it's a three-day period before the inmate gets his copy and 30-day compliance. A. Yes.

Q. And attached to that was the Inmate Grievance Commission's recommendation dated March 7, 1973, and your order stating, the order of the Inmate Grievance Commission is affirmed this 20th day of March, 1973, signed by you, signed 13 days after the Commission's recommendation.

(30) Subsequently, on April 2, Mr. Jordan sent a letter, a three-page letter to you concerning this case and detailing point by point what his objections were to the Grievance Commission's order which you had affirmed on March 20th. Subsequent to that, on April 6, you sent another letter to Mr. Jordan stating, "Enclosed is a copy of the revised order in connection with the Inmate Grievance Commission's hearing in the complaint of Midgett, Minnick, and Minnick," and attached to that was a Xeroxed order signed by you, also dated March 20, 1973, which in substance — well, at the very least, it modifies substantially the original recommendation of the Grievance Commission. It is prefaced by the paragraph, "The order of the Inmate Grievance Commission is modified as reflected hereinafter." And then later, that second order was sent by Mr. Jordan to the Penitentiary.

My question with regard to that series of communications and that action taken on your part is this: Isn't it true that the information that you received from Mr. Jordan in this case substantially after the 15 day period had passed, but more importantly, the information (31) that you received from Mr. Jordan concerning this complaint, the facts which underlay the complaint, Mr. Jordan's opinion with regard to the facts and his objection with regard to the Grievance Commission's recommendation, which you on March 20th, had affirmed, or at least proposed to affirm, isn't it true that the letter that Mr. Jordan sent you caused you to substantially change what your opinion was, substantially change your final order? A. No, it is not true, the way you put it.

Q. Well, could you explain how it's not true? A. Well, first of all, the order, the final order and the only order in that case granted the same relief that would have been granted if the order had been affirmed as originally drafted. Secondly, there were unusual circumstances in connection with the facts in that case that intervened from the time of the hearing and to the time of my final order, namely a riot at the Penitentiary, which had a great and detailed bearing on the action to be required by the Division of Corrections in compliance of the order, in that a great deal of their facilities were ruined and burned, the staff was seriously strained and there were (32) many changed circumstances that had occurred that are not reflected in Mr. Jordan's letter nor reflected in the Inmate Grievance Commission's findings of the facts.

Q. So, in summary, what was the reason that the second — well, first of all, let me ask this. The second order that you signed your name to, and I use order in quotes, because I don't want— A. As I recall that order, that last paragraph of the order specifically concurred with the order of the Inmate Grievance Commission and ordered the Division of Corrections to do everything physically possible to provide the physical comforts of the complaining inmates.

Q. Well, that's true. It says the Division of Correction is ordered to continue every reasonable effort to improve the physical conditions of all inmates, I think, confined to the Penitentiary. A. As I recall, I also mentioned that there was physical problems involved, that the physical facilities at the Penitentiary, where the reception diagnostic center is housed was old and antiquated and we were then currently considering a new facility and had the request of the General (33) Assembly for funds for such a facility which would alleviate the very problem the inmates were complaining about. This fact was not brought forth in the Commission hearing.

Q. Let me ask you one procedural question about the second document to which you affixed your signature in this particular case. It's dated March 20, 1973, but that

in fact was not signed on March 20, is that right? A. That's right.

Q. Do you know when it was signed? A. I believe it was about April — sometime between April 2 and April 6.

Q. Well, your letter to Mr. Jordan was April 6. So I assume it would be around that period of time. And the reason, as I understand it, that it became necessary to change your proposed affirmance of the Grievance Commission's order to this rather lengthy modification of the Grievance Commission order was, first, changed conditions at the Penitentiary as a result of a riot, is that right? A. That's one of the factors, yes.

Q. What were the other factors? A. Some of the things pointed out in Mr. Jordan's (34) letter.

Q. Anything else? A. I'm not sure, at this point in time. It might well have had something to do with the budgetary hearings we had being before the Capital Budget and Improvement of the Penitentiary — maximum security — it's not called Penitentiary. It's called maximum security facility.

Q. Let me just ask one other question concerning this particular case and that is, is it your position that the final order in this case, the one that was signed April 6 or so — April 5, whatever — of 1973, does not substantially change the relief that was granted originally by the Commission? A. Yes. As I recall, the issue in this particular case was the inmates were in protective custody. Their complaints were that being confined in protective custody, they were not given all of the amenities that they would have in general population. Therefore, the decision as to whether they remain in protective custody was within the prerogatives of the inmates, in that simply by signing a waiver, they could remove themselves from those conditions. (35) Granted, they could then expose themselves to whatever the problems were in the general population, but the conditions which they complained of, namely the lack of showers and other physical deprivations as they alleged, could have been corrected

or was within their power to correct simply by removing themselves from that status.

Q. And the effect of your final order was to notify them of that? A. It was included in the order, I believe, or at least, I made reference to that.

Q. What I was getting to, when I asked that question was I believe you said in your last sentence of the April 4th or 5th order was that the Division of Correction is ordered to continue every reasonable effort to improve the physical conditions of the inmates confined to the Penitentiary? A. There was a reason for that. I recognized that even though those inmates were in protective custody, they were still entitled to the provisions of human needs and certainly the order implied and directed the Division of Corrections to insure that those human needs were provided.

(36) Q. Yes, sir. Isn't it true that the order that you finally affixed your signature to here modified the recommendations of the Inmate Grievance Commission as to the extent of making it unnecessary for the Penitentiary to comply with the specific recommendations made by the Grievance Commission, but instead made it mandatory on the Penitentiary to in general make conditions improved, as you say, the physical conditions? A. I think I would agree with you, it gave the Division of Corrections and Penitentiary more latitude on how they provided these amenities. Whereas, the Inamte Grievance Commission order narrowed their opportunity to provide these amenities.

Q. The Commission order in 6 or 7 instances stated specifically what those particular complaining inmates should have, for example, No. 1, protective custody inmates be given two showers a week. No. 2 was reasonable efforts be made to permit protective custody inmates to receive visitors in the general visiting area, No. 3, inmates under protective custody should be given exercise daily, No. 4, inmates under protective custody be given work assignments (37) and, 5 and 6 are similar in other areas; and my question is isn't the effect of your final order in the case to modify the

Grievance Commission's order to the extent of removing the burden from the Penitentiary of providing these specific forms of relief and, instead, placing the burden on them of generally improving the conditions of all inmates in the Penitentiary? A. I think that's correct.

Q. All right, sir. I hesitate to use this particular case as an example, because it's in litigation in another matter and so I won't, but what I am interested in finding out, apart from that case, is that when you communicate with Mr. Jordan or Dr. Boslow about a case that has come to you from the Grievance Commission, do you inform the inmate that this communication is taking place and do you advise the inmate before you sign your final order that you have received certain recommendations or objections from Dr. Boslow or Mr. Jordan and finally give the inmate the opportunity to respond to those objections before you sign your final order? A. No, I do not. I explicitly conform to the (38) Statute which provides that the inmate be provided with a copy of the order, which is done.

Q. The order itself? A. That's correct.

Q. Then isn't it fair to say that on some occasions, and specifically in the Midgett, Minnick case, you received facts and objections and conclusions from, in that case, Mr. Jordan and they were — you used those facts, objections and conclusions in your final order, but the inmates who were affected by the final order never knew that those objections, facts and conclusions had ever been brought to your attention, is that right? A. If you mean I didn't volunteer it to them, the answer is yes. If they had asked me, I presume I would tell them why.

Q. Let me ask you that same question again, Secretary Lally, with a slight modification, that is, if the inmate had counsel, would you treat the case the same way? You still wouldn't volunteer that information to the counsel, is that right? A. The availability of counsel would have no effect, (39) one way or the other.

Q. Have there been any other cases, Secretary Lally, besides the Midgett, Minnick case where you received correspondence based on your draft order from either Mr. Jordan or Dr. Boslow which has caused you to modify or in some way change your draft order? A. I imagine there have been some.

Q. There have been or have not? A. I imagine there has been.

Q. I notice, by the way, in your draft order or on your draft order — and I use draft order, because it's your term, in quotes — in your draft order in the Midgett and Minnick case was your signature, and I believe earlier in the deposition you testified that on occasion you send the proposed draft order to Mr. Jordan or Dr. Boslow without your signature, is that right? A. No, I think in almost every case I would affix my signature, and this is a matter of expediency.

Q. It goes with your signature? A. Yes, which would reduce the administrative flow of paperwork. There may be exceptions to that, but (40) I would say, as a general practice, I sign them.

Q. And, when the order is received, the proposed draft order is received by Dr. Boslow or Mr. Jordan, it's their understanding, I assume, that they have three days in which to make some kind of statement to you if they have a statement to make? A. Yes. In fact, they are explicitly told in the letter that the inmate will not be given a copy of the order until three days hence.

Q. And their understanding and your understanding of that three-day period, as I take it, is that that is a three-day period in which they have an opportunity to respond to you about the order? A. That's correct.

Q. Okay. And, as in the Midgett case, because of extenuating circumstances, whatever they may have been— A. I might explain that the reason for this is that the institutional head generally is not knowledgeable of the particular order or the facts in the order and this gives him an opportunity for the first time to have the thing brought to his attention. So that I feel, in (41) fairness to the administration head, he should

have knowledge of this and have an opportunity to respond to it.

Q. That gives him a chance to present some evidence to you before the order actually becomes final? A. At least, to analyze what the problem is or correct it, if necessary, and even begin to correct it before the final order comes to him.

Q. And, as in the case of the Midgett and Minnick case, the three-day period, because of extenuating circumstances, as I understand it, can be extended, so that even if Mr. Jordan, in the Midgett case, doesn't respond within three days, he may at some later time respond and you still may take his response into consideration in changing the order, is that right? A. With some limitation. It couldn't go on ad infinitum. There certainly would have to be some time limit.

Q. That's a difficult question and I was going to refrain from asking you, but since you bring it up, what would you think would be the time limitation Dr. Boslow or Mr. Jordan would have to object to some order they received?

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April 2, 1974

Charles F. Morgan, Esq.
Legal Aid Bureau, Inc.
341 North Calvert Street
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Re: Washington v. Boslow

Dear Mr. Morgan:

Secretary Lally has reviewed his deposition and has informed me that the same contains two errors on page 42, that is, on lines 3 and 7 the word "tape" should be "tickler".

Would you kindly make corrections accordingly.

Very truly yours,

DONALD R. STUTMAN,
Assistant Attorney General.

DRS/lah

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(42) A. I'd say normally, if I don't receive an answer by 30 days, they would be getting a telephone call from me, because I keep a tape on every one I send them to remind me that it has been sent and I'm waiting for a reply.

Q. Well, at the end of 30 days, you would call and ask them if the order has been complied with? A. I keep a tape on it and it accomplishes both purposes.

Q. I see. A. There is also an additional problem. The Inmate Grievance Commission wants to know whether their order has been complied with. So when I receive a response from the agency head, I send a copy of that to the Inmate Grievance Commission, so they know the order has been complied with or what action is taken.

They haven't been made aware of it yet, so they would know when they get a copy of the reply from the agency head and they in turn would be aware of whether the order was complied with or not.

Q. Suppose at the end of the thirty-day period, you talk to either Mr. Jordan or Dr. Boslow on the phone and say, No. 1, I haven't heard anything from you about any (43) comments you have about this order and, No. 2, I'm assuming it's being complied with, and Mr. Jordan says, well, in fact, I do have some comments about them, here they are, or I'll send them to you in a letter and you will have it tomorrow, and you receive those comments and they are of the nature that would cause you to change your order; would you then change it? A. It would be a highly unusual circumstance. I think I would tell them, sorry, you are a little late.

Q. So you would say thirty days is kind of a cut-off, thirty-three days? A. Usually, but unless there would be some circumstances, that I can't imagine at this time, but I think that would be a reasonable time to respond.

Q. Secretary Lally, what else, if anything, do you do besides sending the letter with the order and the follow-up 30-day phone call to assure compliance with orders? I'm not saying that isn't enough, but do you have to do anything else? A. There could be occasions where I may have to involve other agencies to provide whatever the order (44) encompasses. For example, if it's a matter of providing training to their personnel, I would have to check with the Correctional Training Commissio. , the Executive Director of that Commission, to see whether or not their staff is equipped to implement the training that is recommended. There could be a security matter involving expertise of the State Police I might have to check with the State Police, which is also one of our agencies, to see whether or not — so it's not beyond imagination that I would have to consult with other people to make sure it can be implemented, and it could come up at various staff conferences with them on a variety of things, such as personnel matters or budgetary matters.

Q. Have there been cases you can recall where there has been a refusal on the part of whoever the person is to comply to in fact comply? A. The only indication I get of that type of thing is occasionally I'll get a letter from an inmate where he will infer that he's being harassed because of the inmate grievance procedure. In those cases, I'll respond to the inmate and request a report from the agency involved.

(45) Q. But that's a little different than compliance. You have never had any occasions, I take it, when there has been a refusal on the part of any institution employees or officials to comply with any order? A. I have letters from inmates contending that, specifically Mr. Minnick, who is a pretty good letter writer, prolific letter writer. Each and every one of those are checked to find out whether the allegation is valid or not.

Q. Who does that checking? A. I, personally, and my secretary.

Q. You would call the person in the institution who is supposed to be complying who is alleged not to be? A. I would call Commissioner Jordan, if it's the Division of Corrections, or his executive assistant, Miss Mercedes Stevens, and ask him what happened and have him check into it or have her check into it.

Q. Have you ever had to occasionally discipline an employee or official of the Division of Correction or Patuxent for not complying? A. Thankfully, no.

Q. Discipline in any way, for not complying? (46) A. It hasn't happende yet, but I wouldn't hesitate to do so.

Q. Along those lines, have you ever found it necessary to discipline, again from a reprimand up to a discharge, any employee or official of the Division of Correction or Patuxent, as a result of a recommendation by the Grievance Commission? A. I'm not sure if the Hagerstown allegations, where the guards there were charged with physical abuse against the inmates, I don't know whether that came before the Commission or not, but that was an instance where disciplinary action was taken against personnel. However, my

recollection of that was it was not an outgrowth of a recommendation of the Inmate Grievance Commission, but an example of discipline.

Q. Was that mistreatment by a guard? A. There was a riot at Hagerstown several years back, where a report came to me then from the then Commissioner of Corrections, I believe, Cannon, at that time, that he had received information from one of the officials at Hagerstown that the guards after the riot had used undue force against the inmates. That case is now pending in court. So I would (47) rather not elaborate beyond that, but disciplinary action was taken against the guards in that case and I don't recall whether that was before the Commission or not.

Q. I notice in some of the opinions of the Grievance Commission affirmed by you that we had an opportunity to look at downstairs, that on occasion, the recommendation of the Commission grants more than just relief to the person involved. For example, the decision of the Commission may recommend, well, for example, may recommend that the Division of Correction establish a policy to the effect that an inmate who is in segregation may not represent another inmate at an adjustment hearing. I think that was a fairly recent decision made by the Grievance Commission, and I am wondering when those kind of recommendations which then come to you and are affirmed and sent to Mr. Jordan which appear to suggest a new policy on the part of the Division of Correction or on the part of the institution that is involved, in the course of your compliance, your endeavors to insure compliance, do you ask Mr. Jordan or require Mr. Jordan that he send you a copy of a written directive to the effect that this recommendation has been implemented? (48) A. Not usually, unless it's an outgrowth of a specific order.

Q. That's what I mean. I noticed that in some cases the Inmate Grievance Commission will make a general recommendation as well as make an order in a specific case. A. If it's contained within the order, yes, I would. If it's not contained within the order, this will happen where the Commission may witness something

in the course of their hearing and they bring it to my attention; for example, if the hearing room where they conducted their hearings were not adequate, where there was a hallway and people would walk through and there was no privacy, something like that, I would bring it to the attention of the Commission of Corrections or the Warden, as the case may be, and try to get it corrected. But I would not require a written letter that it was corrected. So, occasionally, there are administrative recommendations made by the Commission that are not contained within the order itself.

Q. When you say not contained within the order itself, are you referring to that portion— A. That was not at issue.

(49) Q. Are you referring to that portion of the paper received from the Commission entitled, "Disposition"? A. I'm talking about the complete order.

Q. The whole thing? A. The whole thing.

Q. So — let me be sure I understand that at this point. With regard to those recommendations of the Commission that appear to suggest changes in policy, either division-wise or institution-wise, the Division of Correction in your view is not held to implementing that new policy unless that policy was particularly at issue in that Commission hearing, is that right? A. I'm not sure I understand you correctly, but if you are saying if the recommendation is outside of their order and is not an issue in the order — in other words, let us say it's dictum — should the Division of Corrections comply with that dictum?

Q. Yes, that's exactly the question, and amplification of the question is does the fact that you have affirmed the order, including the dictum, bind the Division of Correction to the dictum? (50) A. I would say that they would give appropriate weight to the dictum as they would to any court decision dictum, but the specific compliance must be with the specific order of the IGC.

Q. How does Commissioner Jordan determine — well, what could you do to be sure that Commissioner Jordan

knows what is dicta and what is not dicta in a particular opinion? Do you leave that up to his discretion? A. Well, the way the format of the order is set up, the Inmate Grievance Commission order, that is spelled out specifically by Statute there shall be findings of fact and a conclusion and then the law refers to the order of the Commission. There is no "order" in the order itself. It's only set forth in the conclusions. That, in a sense, is the "order," and everything contained therein, in effect, is the order, and I expect and insist upon specific compliance with everything contained in that conclusion.

Q. In the disposition section? A. Yes, because, as you know, the format of the IGC order doesn't come out as does a court order. In other words, it's not separated, in the format of the thing. So, (51) really, it's only in the disposition.

Q. The disposition is what the "defendants" have to follow, the Division of Correction or Patuxent? A. Definitely, because sometimes the findings of fact and conclusions may recite particular dictum in the conclusions and the conclusions are in a sense the order.

Q. Then if you affirm the recommendation of the Commission in what I notice to be a rather standard way, a one line — I forget the exact wording, but basically it's, "The recommendation of the Commission is hereby affirmed"? A. I generally say the order of the Inmate Grievance Commission is affirmed.

Q. What that means is that the Division of Correction must comply with everything that is under disposition in that order, is that true? A. Depending on how you interpret the Statute.

Q. Well, how do you interpret it? A. I interpret the disposition to be the "order," because the Statute, if we had it here before us, we could review it, but as I recall it, it says that the order of the (52) Inmate Grievance Commission; so the findings of fact, conclusions and disposition, I believe those three general words—

Q. Well, let me ask you one more time to make sure we have it pinned down. It's your feeling that if you

affirm an order, and you said the order of the Grievance Commission is hereby affirmed, that means, in your mind, at least, that the Division of Corrections is to comply with whatever is written in the Grievance Commission's recommendation under the heading disposition? A. Without question, that's the disposition, and it conceivably concerns other parts, but it certainly is as to the disposition.

Q. And anything outside the disposition, in the conclusions and findings of fact, they might put in an extraneous recommendation of some kind, but that is dicta? A. It could be. The Inmate Grievance Commission are not all skilled lawyers or students and sometimes their orders aren't that precise.

Q. But, at the very least, what is in the disposition, and if you affirm an order, all parties can be assured that (53) what you meant to do is to put into practical effect what is in the disposition section? A. At a minimum.

Q. At a minimum, all right, Just one question, Secretary, concerning the subpoena duces tecum which was served on you for this deposition. Point No. 1 is that you should bring with you any and all written rules, regulations, policies, standards, guidelines, procedures or practices which concern the reviewing by the Secretary of the orders or recommendations of the Inmate Grievance Commission and which are presently in effect, and it's my understanding from what you said that the only written rules, procedures or any of these other words I just read off are the Statute itself and the regulations of the Grievance Commission which are in the 12.00 series, is that right? A. That's partially right. I do have written guidelines for all our agencies that are applicable across the board to all of them as to administrative actions that they must submit to us for review and approval. This would be applicable to the Inmate Grievance Commission, as well as any of the other divisions within this department.

(54) Q. They would be general regulations that apply to all— A. Pertaining to budget, personnel practices, use of cars, energy crisis, et cetera, et cetera.

Q. Is there anything else that specifically applies to the Inmate Grievance Commission? A. That specifically applies to the Inmate Grievance Commission, there may be correspondence on individual cases. As far as written direction, data, they all contained within the Statute and the rules and regulation of the Commission itself.

Q. You haven't issued any directives or memoranda or anything along those lines to guide the Commission? A. Not to my recollection.

Q. And you don't have any yourself that guide what we discussed as your function and your role with regard to the Commission? A. Not that I can recall specifically, because it's primarily a matter of conformity with the Statute.

(Mr. Morgan) Thank you, Secretary, I don't believe I have any other questions.

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END OF VOLUME II